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MASSACHUSETTS BAR ASSOCIATION, 60 State St., Boston, Mass.

INTRODUCTORY COMMENT.

The suggestions of His Excellency the Governor, former Attorney General Benton, and the Commission on "Obsolete" Laws, some of which are far-reaching, are here reprinted for the information and study of the bar. The following notes may prove of assistance in considering them.

As to the suggestion that by statutory change comment might be allowed on a defendant's failure to testify in a criminal case, a constitutional amendment would seem necessary. Art. XII of the bill of rights provides that no one shall be compelled "to accuse or furnish evidence against himself". The statute allowing a defendant to testify at his own request (G. L. 233, s. 20, sub-sec. 3) provides that "his neglect or refusal to testify shall not create any presumption against him". Under opinions since this act was passed in 1866 (See also St. 1870, c. 393, s. 1) argument by prosecution on the defendant's silence appears to be unconstitutional (See Com. v. Marlow, 110 Mass. 411; Com. v. Maloney, 113 Mass. 211; Com. v. Scott, 123 Mass. 239). We think it has not been decided, however, that there is anything express or implied in the constitution which would prevent the legislature from repealing the provision that no "presumption" should be made because of the defendant's silence, and leaving the defendant's rights to the express language of the constitution without comment by counsel or by the court, thus making it unnecessary for the court to warn the jury as a matter of law that they are not entitled to do what every human juryman probably does do to a greater or less extent,—i. e., think about the defendant's silence in a natural way in connection with the other evidence. The attempt of the present statutory clause to govern the operation of a juryman's mind seems a rather artificial extension of the purpose expressed in the bill of rights. The suggestion of majority verdicts seems to require constitutional amendment. The subject was debated at length in the constitutional convention and the proposal was rejected (See Debates, Vol. I, pp. 389–435, cf. Report of special committee of Massachusetts Bar Assoc., Massachusetts Law Quarterly, Feb., 1918, 81).

As to the suggestion to restore the common law relations of judges and juries in relation to the facts and evidence, which has existed in the Federal Courts since 1789, but has been restricted in the state courts since the statute of 1860 (See Massachusetts Law Quarterly, Aug., 1918, p. 347, especially pp. 356–357; Jan., 1926, p. 57); it seems questionable whether the free citizens of Massachusetts, who are often flattered by others for their courage and intelligence when they serve on juries, would be pleased if they fully appreciated that the present Massachusetts statute was based on the idea that they do not have sufficient intelligence and courage to disagree with a judge's view of the facts and evidence if they think he is wrong. One would suppose that they would want this statute repealed if they really understood its meaning.

As to the suggestion of transferring the power to grant respites to the court, while we appreciate the serious responsibility which is now placed upon the governor (a responsibility which has evidently been met recently with care and courage) we question the advisability of transferring this responsibility to the courts. It seems to be a natural part of the executive function and, however difficult, we believe it can be exercised by the executive with a better popular understanding in the long run, than if it were transferred to the courts where it might cause more misunderstanding of the judicial process.

The decision of the court in Anderson v. Atty. Gen'l, referred to in the report of the Attorney General, p. 23, was discussed at length in the Quarterly for Aug., 1926, pp. 90–96.

As to the recommendations of the Commission on Obsolete Laws, we respectfully question the "obsoleteness" of the clauses in Ch. III of the constitution, which are referred to, and the advisability of any of the proposed constitutional changes. We also question the advisability of the repeal of laws which are temporarily superseded by the existence of Federal statutes, such as the bankruptcy act.

We submit that G. L., c. 256, as to recognizance for debt should not be repealed. It was originally adopted as c. 36 of the acts of 1781 for the purpose of providing a more prompt and less expensive method of collecting debts (See title and preamble St. 1781, c. 36). It is one of those old forgotten statutes which may, at any time, come into more frequent use under modern conditions. The late Mr. Joseph Willard, clerk of the Superior Court, once expressed surprise that it was not used more than it is by the bar.

At the hearing before the Judiciary Committee, the Committee on Obsolete Laws submitted the draft resolve to continue the commission in existence and enlarge its powers, which is printed in a footnote below.*

Time and space prevent further comment upon various important suggestions, but the contents of the following documents deserve the serious consideration of the bar, in detail.

F. W. GRINNELL.

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*RESOLVE PROVIDING FOR A FURTHER INVESTIGATION AND REPORT BY THE COMMISSION ON THE REPEAL OF OBSOLETE LAWS.

(Submitted to the Judiciary Committee by the Commission whose report, Senate No. 4, is here reprinted.)

RESOLVED, that the commission on the repeal of obsolete laws, appointed under chapter twenty-five of the resolves of nineteen hundred and twenty-six, is hereby revived and continued in office, with the powers given it by said resolve, and with the further powers, if not given by said resolve, to recommend the repeal of existing laws, though still enforced, the reason for the enactment of which has ceased to exist, and to recommend the repeal, amendment or revision of existing laws, which owing to changed conditions have become unsuited to the purposes for which they were enacted.

The commission shall be provided with quarters in the State House, and may expend for clerical and other necessary expenses, from such appropriation as may hereafter be made, such sums, not exceeding in the aggregate five thousand dollars, as the governor and council may approve; but the members of the commission, except the secretary, shall be unpaid.

The commission shall report to the general court its recommendations, with drafts of such legislation as may be necessary to effect said recommendations, by filing the same with the clerk of the senate not later than January first, 1928.

EXTRACTS FROM GOVERNOR FULLER'S SECOND INAUGURAL ADDRESS.

I advocate the repeal of the statute precluding the prosecuting officer of the Commonwealth from commenting on the failure of the defendant to take the stand. Such men as Hon. Charles E. Hughes have denounced the present situation as unsound in theory and practice. A statute, however, allowing the Commonwealth to call the defendant for the purpose of cross-examination involves a constitutional objection. The same result can be obtained by permitting the district attorney to argue the defendant's failure to take the stand. The only action necessary here to achieve this result would be for this Legislature to repeal the so-called Ben Butler statute.

Juries in criminal cases, except those growing out of the killings of human beings, should not be required to arrive at their decisions unanimously. The agreement of eleven jurymen should be sufficient, and the fact that a single juryman for some reason does not agree with his fellows should not result in forcing another trial. I recommend legislation to bring about this change.

The common-law power of a judge to advise the jury upon the facts, existing in the Federal courts as well as in the English and the Canadian courts, which was taken away from our judges in the course of a general revision of the statutes in 1860, without special or separate act to that effect, ought to be restored to them.

Pass Authority to Grant Respites to Courts.

At present it occasionally happens in capital cases, after the courts have set the period within which the sentence pronounced by them shall be carried out, that hearings on exceptions or other court proceedings necessitate postponing the execution of the sentence. Strangely enough, the courts themselves have no power of postponement in such cases, and were it not for the intervention of the governor the accused might be executed before the courts had finally determined the question of law presented. The governor has nothing to do with the court proceedings and the state of the law which requires his intervention under these circumstances should not continue. The power of respite should at such times belong to the courts. I am informed that the necessary change can be brought about only by an amendment to the Constitution.

I recommend that the necessary proceedings be instituted to place the courts in complete control of this matter.

Firearms Regulation.

The increase in the number of crimes of violence in which pistols and revolvers figure has led to a positive public demand for regulatory legislation relating to such weapons. Effective legislation should be provided which will minimize the use of pistols and revolvers by criminals. Possession of a firearm by a person committing or attempting to commit a felony should be punished by a sentence of at least five years in the State Prison; a heavier penalty should be prescribed for the second offense; and a life imprisonment for a third.

Obsolete and Confusing Laws.

I direct your attention to the recommendations contained in the report of the Special Recess Commission, created to study the question of obsolete laws and those which need revision, in an attempt to make more simple and definite the laws of the Commonwealth. That report contains many sound and pertinent suggestions which I commend to your consideration.

I also recommend that this commission be authorized to continue its work.

Qualification of Physicians and Lawyers.

The practice of medicine and the practice of law are two of the most important professions coming under the control of the Commonwealth. Each should have the highest standards of excellence for they deal with the most precious possessions of the people.

I recommend that the Board of Registration in Medicine be given discretionary powers to pass upon the qualifications of medical schools so as to protect our citizens from unqualified practitioners. I further recommend an increase in the penalty for illegal practice. Persons found guilty of this offense have resumed the practice of medicine. An increased penalty will have a deterring effect.

In the matter of the standards for admission to the bar, the Judicial Council has recommended that the Supreme Court should have the power to make rules for admission. I endorse this recommendation.

The unfit in these two great professions should be eliminated and hereafter only those qualified by training and possessing upright characters should be admitted to practice.

Referendum on Biennial Sessions.

May I counsel an expeditious transaction of such affairs as come before the General Court? I believe we should establish ninety days as the maximum legislative session until Massachusetts joins the great number of States now functioning successfully under biennial sessions.

The people of Massachusetts are watching with concern the continual balking of their right to vote on this matter. It is a simple request that they make—the right to speak with authority on a question of importance to them. They mean to exercise that right. I shall support them in that intention. In all the forty-eight States of the Union, there are but five which have annual legislative sessions. Besides Massachusetts they are Rhode Island, New York, New Jersey, and South Carolina. In 1926 South Carolina had a session of forty-three days; Rhode Island, sixty-three days; New York, eighty-three days; and New Jersey only thirty-four days. Massachusetts' Legislature was in session this last year 144 days. We had almost as many legislative days as New York, New Jersey, and South Carolina combined.

This Legislature without any further hesitation should provide for a vote of the public on biennial sessions. I have travelled over this State somewhat and I can say to you quite positively that practically every audience that had an opportunity indicated its approval of biennial sessions.

Forbid Legislators Acting as Counsel.

I recommend the enactment of legislation forbidding appearances of members of the General Court as counsel before any Board or Commission of the Commonwealth. There has been just criticism of members of the Legislature in this regard. The Federal Government has enacted legislation forbidding Federal legislators to engage in practice of this sort. Massachusetts should enact similar legislation.

Public Document No. 12

The Commonwealth of Massachusetts

REPORT

OF THE

ATTORNEY GENERAL

FOR THE

YEAR ENDING NOVEMBER 30, 1926

BOSTON
WRIGHT & POTTER PRINTING COMPANY
32 DERNE STREET
1927

The Commonwealth of Massachusetts

DEPARTMENT OF THE ATTORNEY GENERAL,
BOSTON, Jan. 19, 1927.

To the Honorable Senate and House of Representatives.

I have the honor to transmit herewith the report of the Department for the year ending November 30, 1926.

Very respectfully,

JAY R. BENTON,
Attorney General.

The Commonwealth of Massachusetts

DEPARTMENT OF THE ATTORNEY GENERAL,
State House.

Attorney General.
JAY R. BENTON.

Assistants.
ALEXANDER LINCOLN.
JOSEPH E. WARNER.
LEWIS GOLDBERG.[1]
A. CHESLEY YORK.
JAMES H. DEVLIN.[2]
ROGER CLAPP.
CHARLES F. LOVEJOY.
MELVILLE FULLER WESTON.
ALFRED R. SHRIGLEY.
JACOB L. WISEMAN.[3]

Chief Clerk.
LOUIS H. FREESE.

Cashier.
HAROLD J. WELCH.

[1] Resigned February 2, 1926. [2] Resigned November 10, 1926. [3] Appointed March 18, 1926.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

FOR THE FISCAL YEAR.

General appropriation for 1926	$93,000 00
Appropriation for small claims, St. 1925, c. 211	5,000 00
Appropriation for 1925, unexpended balance brought forward	6,074 95
Special appropriations:	
Legal services, National Bank Tax Litigation	18,564 10
Publication, Opinions of Attorneys General, 1921–1924, c. 46, Resolves of 1926	4,000 00
	$126,639 05

Expenditures.

For salary of Attorney General	$8,000 00
For law library	508 50
For salaries of assistants	34,425 15
For clerks	7,886 50
For office stenographers	6,920 42
For telephone operator	992 90
For legal and special services	5,912 00
For office expenses and travel	3,578 89
For court expenses	14,524 31
For small claims	2,123 70
For National Bank Tax Litigation	18,564 10
Total expenditures	$103,436 47

The Commonwealth of Massachusetts

Department of the Attorney General,
Boston, Jan. 19, 1927.

To the Honorable Senate and House of Representatives.

Pursuant to the provisions of section 11 of chapter 12 of the General Laws, I herewith submit my annual report.

The cases requiring the attention of this Department during the year ending November 30, 1926, to the number of 10,456, are tabulated below:

Corporate franchise tax cases	1,654
Extradition and interstate rendition	326
Grade crossings, petitions for abolition of	56
Indictments for murder	43
Land Court petitions	361
Land-damage cases arising from the taking of land by the Department of Public Works	41
Land-damage cases arising from the taking of land by the Metropolitan District Commission	50
Land-damage cases arising from the taking of land by the Department of Mental Diseases	4
Land-damage cases arising from the taking of land by the Pilgrim Tercentenary Commission	1
Miscellaneous cases arising from the work of the above-named commissions	57
Miscellaneous cases	1,565
Petitions for instructions under inheritance tax laws	38
Public charitable trusts	200
Settlement cases for support of persons in State hospitals	72
All other cases not enumerated above, which include suits to require the filing of returns by corporations and individuals and the collection of money due the Commonwealth	5,988

Capital Cases.

Indictments for murder disposed of during the year 1926:

Berkshire County. — In charge of District Attorney Charles H. Wright: Chester Darling.

Middlesex County. — In charge of District Attorney Arthur K. Reading: Vincenzo Bruzzese, John J. Devereaux, Edward J. Heinlein, John J. McLaughlin, Robert L. C. Shafer, Robert A. Smith, Richard Stewart, Jerry Gedzium, Francisco A. Ferraro, Giovanni Ierardi, Carmine Lo Priore, Pelino Presutti, Donald Mark Ferguson, George C. Farley, Charles Henry Slyvert and William C. Moir.

Norfolk County. — In charge of District Attorney Winfield M. Wilbar: Stanislaw Kwistkowski and John E. Mackenzie.

Plymouth County. — In charge of District Attorney Winfield M. Wilbar: George Abrahams, Napoleon J. Cooke and Joseph Silipo.

Suffolk County. — In charge of District Attorney Thomas C. O'Brien: Sabatino Troisi, Rose Candia, Francesco Espisito, Ciro Scherma, Charles H. Tupper, Stanley V. Toothacher, Albert DeShone, Robert Sambursky, Vincenzo Carioti, Peter Carioti and Ralph Cacciaputi.

The following indictments for murder are pending:

Berkshire County. — In charge of District Attorney Charles R. Clason: Louis Mercier, Luther Todd and Mary Todd.

Bristol County. — In charge of District Attorney William C. Crossley: Dan Kaminski.

Hampden County. — In charge of District Attorney Charles R. Clason: Michael Fiorentino, Thomas Kosier, Richard C. Bearse [1] and Trisa S. Nascimbeni.[1]

Middlesex County. — In charge of District Attorney Robert T. Bushnell: Herbert J. Gleason.

Norfolk County. — In charge of District Attorney Winfield M. Wilbar: Celestino Madeiros, Nicola Sacco and Bartolomeo Vanzetti.

The Administration of Criminal Justice in Massachusetts.

The past eighteen months have been prolific with widespread activity not only in this Commonwealth but throughout the country on the part of citizens, State legislatures and bar associations in an effort to correct the grave defects that exist in the administration of criminal justice and to arrest the dangers that menace the safety, lives and property of our citizens.

It is a matter of no importance in this connection to determine

[1] Committed to State Hospital.

whether or not there was or is at the present time a "crime wave". It is sufficient to say that the statements of crime in our daily newspapers are a challenge to action. Neither is it necessary to attempt to determine the causes of the present crime situation. Every conceivable cause has been assigned to account for the many crimes of violence that are being committed mainly by comparatively young men.

One of the leading crime commissions of the country has listed the causes as argued before it. They report that "by some the World War is held largely responsible for the increase of crime, but this view is not tenable. Other causes assigned are the great mass of unenforceable laws; the decrease in social and moral responsibility on the part of the people generally; the ease and facility with which persons can obtain the tools of criminals — the pistol and the automobile; the waning of religious faith; the breaking up of home life; the lessening of responsibility of the family; the modern doctrine of 'self expression'; the departure from the old doctrine of discipline; the cultivation of the criminal in the popular press and in fiction; the influence of moving pictures in similar fashion; the hip flask; narcotic drugs; the alien strain in our population; the display of great wealth; the automobile, permitting freedom of movement; the Bedouin life existence of the modern American and his greater mobility; excessive work; insufficient work; childhood complexes; the coddling of the criminal; glandular defects; brain lesions; urban conditions of living; the jazz existence; sentimentalism; the failure to enforce laws; and others too numerous to mention."

But whether the serious situation last year was properly defined as a "crime wave" or not, and whatever the causes for the type of present day crime may have been, there was a positive public demand that something be done. The force of this public demand in regard to the better administration of the criminal law was reflected nowhere more strongly than in the Legislature last year. Approximately one hundred crime bills were filed with the General Court, during the first week in March public hearings were held before the Joint Committee on the Judiciary, and at that time public officials interested in the problem as well as private citizens gave their views on the general situation and on the bills under consideration. As a result several bills were reported out of the committee and later enacted into law. The more important enactments were the following:

A. An act making it mandatory in murder and manslaughter cases and in other felony cases, by order of the justices of the Superior

Court, to certify a transcript of the evidence to the Supreme Judicial Court. The effect of this act is to eliminate the vast delay (sometimes years) usually involved in agreeing upon a bill of exceptions in important criminal cases. Heretofore, in some cases, the delay has been of such an extent as seriously to impair, if not to destroy, the influence of conviction and sentence.

Recently I made a study of all the criminal cases argued before the Supreme Judicial Court of Massachusetts from March 1, 1920, to March 1, 1926, and ascertained the total number of months elapsing between the date of the indictment or complaint and the decision of the Supreme Court. The number of criminal cases appealed to the Supreme Court, and the decisions rendered in this period, was 106, and the average time between the issue and the final decision was 19 months and 2 days, or an average of over a year and a half. During this period there were seven murder cases argued upon exceptions, and the average time from the date of the indictment to the decision was 39 months and 20 days. Such delays tended to decrease the general respect of the community for law. This act will do much to correct the situation.

B. An act further regulating the matter of bail in criminal cases.

This act defines what persons shall be deemed to be professional bondsmen, provides that they shall be governed by rules established by the Superior Court, and in other ways attacks certain evils that existed heretofore in the matter of bail.

C. An act which permits the court to amend complaints and indictments in relation to allegations as to which the defendant would not be prejudiced in his defense. This may be done upon the motion of the district attorney or other prosecuting officer.

Heretofore a defect in the form of an indictment in some cases meant long legal battles before or during the trial, sometimes resulting in the discharge of the defendant regardless of his guilt, thus necessitating the return of a new indictment. This involved needless expense, and delay in some instances meant the defeat of justice, prevented conviction and punishment from acting as a deterrent, and tended to bring the administration of justice into disrepute.

D. An act which empowers the judge to strike from the jury list the names of persons who have been convicted of any felony or any offense punishable by imprisonment in a jail or house of correction for more than one year.

E. An act cutting the number of peremptory challenges of jurors available to defendants in trials for murder and certain other offenses from 22 to 12.

A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court must exclude him. Under the old system, because of the needlessly large number of challenges, it was always necessary in robbery and capital cases to draw from two to five times as many jurors as in ordinary cases.

The system meant considerable unnecessary expense to the counties and frequently enabled defendants to prevent the most suitable men from serving on the jury.

F. An act relative to the arrest of persons while on probation.

G. An act relative to probation, suspended sentences, and filing of complaints in the district courts.

H. An act relative to the criminal records of offenses against the laws of the Commonwealth.

This act requires courts to obtain criminal records of certain prisoners before fixing the amount of bail, requires probation officers to investigate criminal cases and inform the court as to prior criminal prosecutions of the defendants. It further requires the courts to obtain information as to prior criminal prosecutions of defendants before disposing of criminal prosecutions.

I. An act which requires the district attorney to move for sentence not later than seven days after plea of guilty or after a verdict of guilty in cases of felonies not punishable by death, and where no question of law has been reported for decision by the Supreme Judicial Court.

J. An act increasing the punishment for non-appearance of a person duly summoned as a witness in a criminal case.

Heretofore a witness duly summoned to appear and testify and who failed to attend could be punished by a fine of not more than twenty dollars. This has been increased to a fine of not more than two hundred dollars, or by imprisonment for not more than one month, or both.

K. An act providing that the court, on motion of the district attorney, may order the trial of any specific case of crime to take precedence over all other cases.

Seventy-two years ago the Legislature provided that a certain class of cases should be given precedence. This statute had, in many instances, effectively blocked the district attorneys from trying very important criminal cases which ought to have been tried at once. This situation has been cured.

Many of the serious defects that existed in our criminal procedure and statutes have thus been corrected, but the crusade of the law-abiding against the organized business of crime is not completed by

the passage of a few laws. Just as eternal vigilance is the price of true liberty, so eternal vigilance is the only assurance that the administration of criminal law in this Commonwealth shall be made simple, trials speedy and punishment certain and effective.

The battle against crime is not the work of a moment. It requires a breadth and range of study and investigation not comprehended by the pressing of a button, the waving of a magic wand or the stroke of a pen. That is why last year I recommended the establishing of a commission to make a continuing survey of criminal justice in the Commonwealth; to study the causes of crime and factors in the administration of criminal justice, and to make recommendations based on scientifically ascertained facts. I feel just as strongly on this proposition now as I did a year ago, and I renew the recommendation.

It is an inefficient method for the Commonwealth to leave the study of the administration of criminal justice and the formulation of suggestions for its development almost entirely to the casual interest and initiative of individuals. The most satisfactory method of attacking the problem is through the creation of a continuing commission similar to our Judicial Council, representative of the best citizenship of the community, and equipped to find facts, to interpret them, to formulate a program of action based upon them, and to file annual reports with the Legislature for its consideration and action. Such a commission should be public rather than private, because a commission organized by the Legislature will command wider attention and more immediately influence public opinion. In addition, sources of information inaccessible to a private commission can be commanded by a State commission clothed with the usual powers of such public investigating agencies.

As I pointed out last year, such a commission should not consist entirely of lawyers because a number of the factors involved in the general problem are not legal in character. I therefore recommend the establishment by the Legislature of a crime commission authorized to conduct a continuous study of the crime situation in Massachusetts, to consider the subject matters of prevention of crime, and to examine the procedure, methods and agencies concerned with the detection of crime, the prosecution and trial of persons accused of crime, and the punishment, treatment and pardon of convicted persons, and all other matters which have relation directly or indirectly with the administration of criminal justice in Massachusetts.

In my judgment, a thorough survey and an intelligent study of criminal procedure and of the penal statutes over a period of years will soon result effectively in the cutting of legal red tape, and the elimi-

nation of unending delay through the result of technical defenses and the dilatory tactics as practised today, all to the great end that the rights of the public, which seem so often lost sight of, shall be fully protected, while yet assuring to the accused the complete safeguarding of his constitutional rights.

Unifying Police Departments of Metropolitan Boston.

Last year I advanced the proposition that the police departments of the forty cities and towns that make up Metropolitan Boston should be unified, co-ordinated and vigorously supervised. The Joint Committee on the Judiciary reported a resolve providing for an investigation by the Department of Public Safety relative to this matter. The House Ways and Means also passed favorably upon the proposition, but when it reached the Senate Ways and Means, the Resolve received an adverse report. I renew the recommendation this year because in my judgment it is not good business, that is, so far as the law-abiding part of our population is concerned, to have this large metropolitan community, with a population of nearly two million people, policed by forty separate and distinct police forces.

I also suggested the installation of a central broadcasting station for police use so that police orders and information could be communicated simultaneously and instantly to sub-stations. Good roads and high-powered cars have made the escape of criminals far more easy than was the case before the advent of good roads and automobiles. In a half or three-quarters of an hour a person can come into the Metropolitan District of Boston, commit a crime and escape before the alarm can be spread by present methods. When a criminal adopts this method of escape we should determine whether the present system of police communication is adequate to meet the conditions. It would be interesting to ascertain just how long it would take to notify by telephone all the police stations of our forty cities and towns of a crime committed in one of them and to give descriptions of the criminals and the high-powered automobile in which they were escaping.

If the use of the radio in its present development is not feasible, then the printing telegraph system should be availed of. Los Angeles, Chicago and San Francisco have already employed such a system for the capture of criminals and the spreading of alarms. One police official where such a system has been installed has this to say:

> The need for speed and accuracy in transmitting orders or information from headquarters to each of our thirty-seven districts (up to thirty-five miles away) is

obvious. Up to about three years ago messages were transmitted by telephone and taken down in long hand. To transmit a message to all stations it was necessary for the central point to call in seven district stations that in turn would call in the stations under their control. The time required was considerable, especially in emergencies, and mistakes and misunderstandings were bound to occur. We installed a printing telegraph system consisting of one transmitting machine at detective headquarters and a receiver at each of the thirty-seven district headquarters. One switch connects the transmitting machine to all thirty-seven receivers so that with one operation orders can be communicated simultaneously and instantly to every district headquarters in the city. As the messages are printed in plain type there is no chance for misunderstandings. With this system information that involves calling every station can be secured in five minutes instead of the forty-five minutes formerly required.

The primary function of a government is to protect life and property. It should protect itself against crime in a business-like way. The old traditions which cling to the administration of criminal justice, and which have nothing to commend them save their age, should give way to sensible and practical arrangements to reduce crime. To allow our police to fall short of their full effectiveness for lack of proper equipment is an unwise and expensive policy.

A State Central Criminal Identification Bureau.

I recommend the establishment in the Department of Public Safety of a central bureau of identification of criminals. This recommendation is made so that there may be gathered together in one place and made available for every agency dealing with criminals in the Commonwealth the records of the different cities and towns and institutions throughout the State and also other State and Federal jurisdictions, so disclosing promptly for their use the criminal's past history in every other community.

The Pistol Menace.

The pistol is one of the greatest, if not the greatest, menace to the peace of society today. It is the main reason why crimes of violence are common today. The gunman must go. The demand of the hour is for some means to be found by which the consequences of the use of pistols by criminals can be made so dreaded that they will be deterred from using them. The Governor's recommendation in his recent message to you on this subject should have your early attention and support. The deliberate use of a dangerous weapon in the attempt or accomplishment of a crime should add very materially to the measure of punishment to which the user would be subjected.

But however drastic individual State laws may be in regard to this matter, it is not going to be easy to accomplish real results while there is still the opportunity for bringing in weapons by mail and on the person over the borders of the State, and so long as the Federal government and other States do not keep pace. Your Attorney General is a member of the sub-committee on firearms regulation of the National Crime Commission. This committee held an all-day conference in New York City recently and meets again in Chicago on January 28 and 29. Recommendations are now being drawn up which, if enacted into law by Congress and the several State legislatures, will go far toward deterring the commission of crimes by the use of a pistol.

Authorizing the Court to Comment upon the Evidence.

In the Federal courts and in England, it is competent for the court to comment on the evidence and to express an opinion thereon. This right existed in Massachusetts about fifty years ago. The court's view as to the evidence is not binding upon the jury, but is merely advisory. This right of the court has operated in a very satisfactory manner in the Federal courts and has been of great assistance to the jury. It has enabled the jury to get a clearer view of the case and better to comprehend the law applicable to the situation, as laid down by the court. It seems to me that a judge in this Commonwealth should be something more than a referee in a battle of wits. He should guide and control an inquiry; he should have not only the right but the absolute duty to give to the jury the assistance of an unbiased, dispassionate mind to aid them in the consideration of the evidence. In my judgment, the extension of the power of our judges with reference to the analysis of and comment upon evidence is desirable.

Changes in the Criminal Law recommended at the Instance of the District Attorneys.

In my first annual report I stated that the eight district attorneys were administering their important offices honestly and with great industry and loyalty to the Commonwealth. During the four years of my administration the relations of the office with the eight prosecuting officers have been most harmonious, and in this final report I desire to express my appreciation of the ability, fidelity and earnestness with which the several district attorneys have performed their respective duties and responsibilities.

To bring about an increased efficiency in the administration of the criminal law, and with a view to securing greater co-operation among the district attorneys, each year a call has been issued for official conferences, at which time opinions have been exchanged relative to needed changes in the criminal law. Two such conferences were held the past year, namely, on November 27 and December 18.

At the conclusion of our deliberations it was unanimously voted to authorize me, on behalf of the district attorneys, to make the following recommendations and suggestions:

A. District Court Judges sitting in the Superior Court.

The Judicature Commission in 1921 recommended the enactment of a permissive statute enabling the Chief Justice of the Superior Court to call to his aid justices of the district courts for the trial of jury cases, which would provide the necessary means to relieve congestion of the criminal docket without increasing the number of permanent judges. Such an act was passed in 1923, and the district attorneys, at every conference meeting since that time, have been unanimous in their opinion that the calling of the district court judges has very promptly and effectively resulted in relieving the congestion of the criminal dockets. The deliberate congestion of cases in the Superior Court has been practically swept away. More cases have been tried; more have produced pleas of guilty when trial was found to be imminent; and still more have not been appealed. There is a strong public demand for speedy criminal trials. To let the practice of calling up justices of the district courts come to an end now would be to bring back the deliberate congestion of criminal cases, as referred to. It is most important that this statute should not be allowed to lapse on July 1, 1927, and the district attorneys recommend that it not only be continued in force, but that jurisdiction of the judges so called be properly increased.

B. Bail in Criminal Proceedings.

Of the four hundred criminal cases that were specially investigated by this department the first of last year, by far the greater percentage of the cases involved issues and problems arising out of and incidental to the admission of defendants to bail.

No general observations or recommendations are made on this subject at this time in view of the fact that the Judicial Council now has this subject under consideration, and undoubtedly will file an exhaustive report on this important matter later. The district attorneys do, however, make one specific recommendation.

Cases are not infrequent where persons who have become bail or surety in criminal cases, and who have offered real estate as their qualification for acceptance as such bail or surety, subsequently, while the criminal cases are pending, dispose of or encumber the real estate without notifying the court. Such an act, under St. 1922, c. 465, may be punished by a fine or imprisonment. Criminal prosecution of the bail or surety does not, however, satisfy the purpose of bail. There ought to be additional legislation which would protect the Commonwealth as far as possible in its monetary rights. It is, therefore, recommended that legislation should be enacted providing that where a person or persons who qualified as surety or sureties in cases involving felonies by reason of the ownership of real estate, the officer taking the bail shall file a certificate or caveat with the register of deeds for the county where the real estate is located, the same to constitute a lien upon such real estate, which shall not be discharged until final judgment has been rendered in the case or the principal surrendered by leave of court.

C. The Time within which a Motion for a New Trial may be filed.

In 1922, to take care of a special situation in Suffolk County, the Legislature passed an act which provides that "the superior court may, at the sitting in which an indictment is tried, or within one year thereafter, or, in capital cases, within said year or at any time before sentence, upon motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted or if it appears to the court that justice has not been done, and upon such terms or conditions as the court shall order." (See St. 1922, c. 508.)

It is recommended that this act be repealed and restated as formerly contained in G. L., c. 278, § 29, which read as follows:

> The superior court may, at the sitting in which an indictment is tried, or within one year thereafter, upon motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted or if it appears to the court that justice has not been done, and upon such terms or conditions as the court shall order.

D. Larceny of Property exceeding $2,000 in Value.

G. L., c. 266, § 30, provides for a penalty of not more than five years in State Prison for larceny of property exceeding $100 in value. In a recent case a defendant was convicted of larceny of a huge sum of money from a bank. The larceny wrecked the bank and caused

great suffering to many depositors, yet the maximum penalty was only five years in State Prison, the same penalty which might have been imposed for larceny of property of $101 in value. While such cases may not often arise, it is desirable that the statute should be so enlarged as to meet such a situation. It is recommended that the statute be amended so as to enable the court to impose a sentence of not more than twenty years in State Prison for larceny of property which exceeds $2,000 in value.

E. Conspiracy to Commit a Felony.

It is recommended that legislation be passed providing that a conspiracy to commit a felony shall be punished in the same manner and to the same extent as an attempt to commit a felony.

Interstate Rendition.

The number of interstate rendition cases handled this year was 329, an increase of 33 cases over the previous year. The number of rendition cases heard by this department is increasing each year. The cases involve all manner of crimes from simple misdemeanor to murder. The major portion of the fugitives returned to Massachusetts were upon charges of desertion, non-support and abandonment. The benefits derived in bringing back these erring husbands in the savings to the community and the deterrent effect upon the community are obvious.

There were 18 hearings given to fugitives sought by other States. In all of these hearings the fugitive was represented by counsel. Some of the hearings involved perplexing questions of law. In three instances writs of habeas corpus were brought by the fugitives from justice; in two instances the Commonwealth was sustained and the third case is now pending before the Supreme Judicial Court.

The Commonwealth has honored all requests from other States. In no case has the governor of any State refused to surrender the fugitives from justice of Massachusetts upon the ground that the papers accompanying the requisitions and passed upon by this department were not in proper form. The State of Florida, however, has refused in two instances to return fugitives from justice of Massachusetts upon improper grounds, and the Commonwealth of Pennsylvania has refused to honor the application for requisition in one case because it considered the crime as too trivial.

The Ponzi Case.

On February 26, 1925, Charles Ponzi was found guilty in the Superior Court for the County of Suffolk upon four indictments, charging larceny in several counts. On July 11, 1925, the Commonwealth moved for sentence, and three of said indictments were placed on file, and the defendant was adjudged a common and notorious thief under G. L., c. 266, § 40, upon the remaining indictment, and was sentenced thereon "to not less than seven nor more than nine years in the State Prison." A stay of the execution of said sentence was granted, and the defendant was admitted to bail with sureties in the sum of $10,000, pending an appeal on exceptions to the Supreme Judicial Court. The exceptions were overruled by the Supreme Judicial Court on May 28, 1926. On June 1, 1926, Ponzi failed to appear in court for confirmation of sentence, was defaulted, and a warrant issued for his arrest. Circulars containing a photograph and finger prints of Ponzi, requesting his apprehension, were sent throughout the United States, Canada, England, Mexico and Central America by this department.

Immediately following his default in the Superior Court for the County of Suffolk, Ponzi, in disguise, shipped as a waiter at Tampa, Florida, under the name of Andrea Luciana, on the "Sic Vos Non Vobis", a ship under Italian registry, the ultimate destination of which ship was Italy. The ship proceeded to Houston, Texas, where Ponzi was recognized by a member of the crew, who notified the authorities of that city. The ship, after leaving Texas, stopped at the port of New Orleans in the State of Louisiana, where Ponzi was detained by a sheriff from the State of Texas, who subsequently brought him back to that State.

On June 29 Charles Ponzi was formally arrested in Houston, Texas, under a warrant charging him with being a fugitive from justice. On July 1 Ponzi sought his release from arrest by a petition for a writ of habeas corpus addressed to the District Court of Harris County, Texas, which petition alleged, in substance, unlawful arrest, kidnapping and a violation of his rights as an Italian subject under a treaty existing between the United States and Italy.

A requisition was made by the Governor of Massachusetts upon the Governor of Texas on June 29 for the surrender of the fugitive, and Assistant Attorney General Shrigley, with Police Inspector John F. Mitchell of this department and Police Inspector Henry M. Pierce of the office of the District Attorney for Suffolk County, proceeded to Texas, and the requisition was duly presented to Governor Miriam A.

Ferguson on July 8. A hearing upon said requisition took place on July 16 before the Governor at Austin, Texas, at which hearing Ponzi was represented by counsel. A rehearing thereon was assigned by the Governor for August 2, upon which day the requisition of the Governor of Massachusetts was duly honored, the executive warrant issued, and the return of Ponzi to Massachusetts ordered. The hearing upon the petition for a writ of habeas corpus was continued from time to time to await the action of the Governor upon the requisition. This petition was dismissed on August 5, after a hearing which lasted two days.

An appeal to the Court of Criminal Appeals of Texas was thereupon entered by Ponzi, and he was ordered remanded to the county jail without bail, no bail being allowed under Texas statutes after the executive warrant has issued for the return of a fugitive. On October 12 arguments were made before the Court of Criminal Appeals of Texas, the Commonwealth of Massachusetts being represented by Assistant Attorney General Shrigley. A judgment was entered by that court on October 27, affirming the judgment of the District Court for Harris County, and dismissing the appeal. On November 12 a motion for a rehearing was filed by Ponzi before that tribunal, and an ex parte hearing thereon took place on December 22. No decision has yet been rendered.

Last October one Calcedonio Alviti purchased approximately one hundred acres of land near Lake City in Florida. The property was described by the Boston Better Business Commission as being reached by a narrow, rough sand road and a picture of desolation and loneliness, parts containing high dead pine stumps, with street signs planted in the weeds. It was also further alleged that part of the property was swamp land. This property was deeded by Alviti to the Charpon Land Syndicate, a copartnership of Alviti and Ponzi. It was later transferred to Ponzi, as trustee of the Charpon Land Syndicate. The property was then plotted into small lots, and those interested started disposing of it by a "200 per cent profit in thirty days" scheme. The scheme had features similar to Ponzi's international reply coupon sale of 1920.

Alviti arrived in Boston on Sunday, January 10, and two days later it came to my attention that Alviti was offering "units of indebtedness" of the Charpon Land Syndicate without his having complied with the requirements of the Blue Sky Law relative to the sale of securities. The State police were immediately sent to Alviti's Boston office, and the offering for sale of the "units of indebtedness" was stopped that afternoon. Subsequently a warrant was secured from the

Municipal Court of the City of Boston, and Alviti was charged with violation of the Blue Sky Law. He pleaded not guilty, and after trial was found guilty by Judge Murray, and sentenced to six months. He appealed and later came into the Superior Court, pleaded guilty, and was fined $300.

Cattle Fraud Cases, so called.

During the summer it was brought to the attention of His Excellency, and by him to this office, that certain frauds existed in obtaining reimbursement from the Commonwealth for cattle condemned as tubercular under the provisions of G. L., c. 129, § 33, as amended. It was found that certain persons were using this statute (which was passed in order to enable dairy farmers to have a clean herd of cows and to partially help them to bear the burden of the loss of such cows as were condemned), as a cover for profit-making schemes.

I assigned Assistant Attorney General Alfred R. Shrigley to assist District Attorney Wright of Hampden County in a Grand Jury investigation. Mr. Shrigley being obliged to leave the State on another important matter connected with this office, I assigned Assistant Attorney General James H. Devlin, who continued the Grand Jury investigation with Mr. Wright. At the conclusion of that investigation indictments were returned, which are still pending.

The matter was then taken up by District Attorney Emerson W. Baker of Worcester, and Mr. Devlin assisted him in the Grand Jury investigation there, and, as a result of the investigation, the Grand Jury returned indictments in Worcester County also. These cases are still pending before the courts of this Commonwealth, and I make no further comment on them.

Judicial Salaries.

Seven years prior to the adoption of the United States Constitution, Massachusetts put into its Constitution what has become the classic statement of the American theory of the division of governmental powers. After directing that neither the legislative, executive nor judicial branch of the government should encroach upon the functions of the others, the provision ended with the statement: "To the end that it may be a government of laws and not of men."

The stability of our system of State government depends to a great extent upon the confidence and respect of the people for those who, as judges, hold the scales of justice in their hands; depends upon the character and the wisdom of these men. The ablest and the best of our citizens and those most learned in the law are needed to fill these

great positions of power and responsibility. It is not reasonable to expect that men who have proved their worth in practice will surrender incomes many times as great for the honor of a judgeship. We must pay to our judges salaries more nearly commensurate with the worth of the men called to the service or we shall have a less able judiciary drawn either from mediocre members of the bar or from the class of wealthy lawyers who can afford the inadequate salary in return for the honor of the place. To accept either alternative is to have a lower standard of service than the citizens of the Commonwealth are entitled to have.

The salaries of the justices of the higher courts of the Commonwealth are inadequate to the amount of work required and to the dignity and importance of their offices. I think it is due not only to the court but to the bar that the Attorney General should call the attention of the Legislature to the matter. The fact that notwithstanding the present scale of salaries His Excellency the Governor has been fortunate thus far in having been able to obtain the services of competent and able men for judicial positions does not dispose of nor affect the question. There has been manifested already considerable reluctance to accept positions on the bench on account of the salary of the office. This should not be. The acceptance of judicial appointment ought not to involve a serious pecuniary sacrifice. The compensation of those holding high judicial positions should be made more nearly commensurate with the value and high importance of their services.

Congested Conditions in our Court Houses.

It has come to my knowledge that immediate action is required to provide sufficient accommodations for the courts in several of our counties. Additional sessions which the present business requires cannot, under existing conditions, well be attempted; and those sessions now required by statute cannot be held with reasonable convenience. The large increase in court sessions, and especially criminal sessions, has resulted in a congestion in the court houses of one or two of our larger counties, but a situation particularly exists in Suffolk County which can be accurately characterized as critical. At the present time the accommodations for the administration of criminal and civil justice in Suffolk County are so inadequate as seriously to hamper and affect such administration, and nothing short of additional accommodations in the way of housing the courts in Suffolk can provide the relief that is demanded. In my judgment, the matter does not permit of further delay and remedial action should be taken at this session of the Legislature.

Daylight Saving Law.

In my last annual report I stated that the constitutionality of the so-called daylight saving law of the Commonwealth had been attacked in the United States District Court by a bill in equity, in which the Attorney General and three other State officers were named as defendants, and that the court had, after hearing and arguments, dismissed the bill. The plaintiffs appealed directly to the United States Supreme Court under a Federal statute permitting such procedure. Briefs were filed and the case was argued in Washington last October. Immediately upon the conclusion of the argument Chief Justice Taft, speaking for the court, stated that the construction of the statute urged by my department, and adopted by the court below, was correct and that the bill of complaint would be dismissed. Subsequently the Supreme Court rendered a formal opinion dismissing the bill and sustaining the various contentions made on behalf of the State officers. By this decision litigation relative to the legality of the daylight saving law is definitely ended.

Alpha Portland Cement Company Cases.

Last year I referred to a large number of petitions filed by both domestic and foreign corporations, following the adverse decision of the Alpha Portland Cement Company cases by the Supreme Court of the United States and founded on the alleged invalidity of the Massachusetts corporation tax law. The total number of such petitions was 801, and the total amount sought to be recovered was about eight million dollars. In all these cases hearings were had before the Supreme Court on motion to dismiss or demurrer filed in behalf of the Commonwealth, and in all of them final decrees have been entered dismissing the petitions. In a few cases appeals were taken to the Full Court and one case (The Celluloid Company *v.* Massachusetts) was taken to the Supreme Court of the United States on writ of error and petition for writ of certiorari. The petition was denied, and the writ of error is now pending.

Railroad Rate Differentials.

The Maritime Association of the Boston Chamber of Commerce has over a long period of time conducted before the United States Shipping Board and before the Interstate Commerce Commission a vigorous fight against the differentials now operating against the Port

of Boston. In November of 1924 this office represented the Commonwealth before the United States Shipping Board in support of the case of the Maritime Association, which sought a rearrangement of the fixed and arbitrary ocean freight rates in order that the inequities of the rail differential might be corrected. At that time certain southern ports were looking for rates which would further discriminate against the Port of Boston and New England ports. The result of the hearing was that, at least as to ocean rates, there was no revision to place a greater burden on Boston and New England ports.

The Maritime Association, however, also brought a complaint before the Interstate Commerce Commission against the Ann Arbor Railroad Company and other roads seeking to abolish the rail differentials that existed in favor of Philadelphia, Baltimore and Norfolk, which resulted in Boston's getting no bulk cargo and losing its export business. The Interstate Commerce Commission denied the petition, but suggested that the railroads agree to equalize the rates on grain ex lake Buffalo. The roads not so agreeing, the matter was then again brought before the Interstate Commerce Commission, and hearings were held May 24, 25 and 26 of 1926. The Commonwealth was represented by Assistant Attorney General James H. Devlin. The examiner recommended to the Commission that the rates on grain ex lake Buffalo to all the North Atlantic ports should be equalized. A petition for a rehearing was filed, granted, a hearing held, and the final decision has not yet been handed down. The Maritime Association, however, is hopeful that the Commission will equalize the grain rates ex lake Buffalo to all the North Atlantic ports, removing the rail differential that Philadelphia, Norfolk and Baltimore now enjoy. It is felt that, if that is done, Boston will regain its export business, as this bulk grain for export will furnish a bottom cargo for vessels, and they will call for it at the Port of Boston and take on our goods manufactured here, which now in most instances go to New York, for overseas shipment.

The Billboard Cases.

The numerous suits brought by the outdoor advertising companies to enjoin the enforcement of the rules of the Department of Public Works for the regulation of billboards have occupied much of the time of an assistant attorney general. The bill filed in the United States District Court, and dismissed by that court because of the pendency of the similar suit in the Supreme Judicial Court, was reinstated by a decision of the Circuit Court of Appeals, which decision the United States Supreme Court declined to review. No further steps have to

date been taken in the Federal Court, however. In the State court, progress may be summarized as follows: The dismissal of the numerous petitions for mandamus was obtained upon the ground that the issues raised thereby as to permits for particular years had by lapse of time become moot; the cases seeking review in certiorari have not as yet been prosecuted by the complainants, who have placed their principal reliance upon their several bills in equity; the equity cases have been consolidated, and, together with a somewhat similar suit against the town of Concord, have been referred to a master, before whom hearings are now being had as speedily as is practicable. The final determination of these cases will take some time to reach, for they are complicated and difficult and may require a vast amount of evidence upon the facts as to the billboard situation in Massachusetts.

Initiative Petitions.

Under the provisions of Article XLVIII of the Articles of Amendment to the Constitution, initiative petitions, after being signed by ten qualified voters, must be submitted to the Attorney General for his consideration. If the Attorney General certifies that the measure is in proper form for submission to the people, that it is not substantially the same as any measure which has been qualified for submission or submitted to the people within three years, and that it does not contain subjects excluded from the popular initiative, it may then be filed with the Secretary of the Commonwealth, but not otherwise.

Anderson v. the Attorney General.

In the above entitled case, argued and decided during the year just past, an attempt was made to have reviewed upon *certiorari* the decision of the Attorney General certifying that a certain initiative petition "sets forth a measure which is in proper form for submission to the people; that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years preceding the first Wednesday in December next; and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent." In this, and the companion case of Anderson *v.* Secretary of the Commonwealth, in which it was sought by *mandamus* to prevent the submission of the measure to the people, the important decision was rendered that the exercise by the Attorney General of the power with respect to such certification, conferred upon

him by Article XLVIII of the Amendments to the Constitution, was not subject to collateral attack, nor, in the absence of bad faith, to direct review in the courts.

Settlement of Small Claims against the Commonwealth.

Since the period covered by my last report forty-one claims have been considered and disposed of under St. 1924, c. 395. Of this number twenty-five were allowed, representing a total of $3,161.70; fifteen were heard and disallowed; and one was treated as dismissed for want of prosecution by the claimant. In four matters the department cooperated with the House Committee on Ways and Means, investigating the facts and presenting reports upon the claims embodied in pending bills.

Of the claims dealt with as above twenty-five arose from automobile accidents; five from fires; three from injuries to State employees; two from the expenditure of money by the claimants in dredging operations in Boston harbor, clained to have been in reliance upon a purported understanding as to further dredging to be done by the State; and one each from the following matters, — depredations of escaped prisoners, depredations of foxes from a reservation, undue delay in fencing along a new State road in accordance with award, personal injuries from defective steps, personal injuries from glass on boulevard, personal injuries from pile of ashes on beach, interference with a private drain, death of a seaman on board Nautical Training School Ship, injuries received by a loyal officer during Boston Police strike, and deposit of money by public administrator.

Public Charitable Trusts.

During the past year, the two suits relating to the management of the Robert B. Brigham Hospital for Incurables, to which reference was made in my prior report, were heard by the full bench of the Supreme Judicial Court, and disposed of; the hospital corporation being instructed as to its duties under Mr. Brigham's will, in accordance, for the most part, with the construction contended for by this office.

Litigation over the will of Lotta M. Crabtree is still in progress, a long hearing having recently been had before the probate court, with the executors opposing the claim of an alleged niece of Miss Crabtree to be entitled, as such, to contest the allowance of the will. The contempt case against Ida M. Blankenburg, which grew out of earlier matters in the Crabtree case, was heard by a justice of the Supreme

Judicial Court, and later, upon certain issues, by the full bench, and is as yet undecided.

The passing upon accounts of trustees for charitable uses, consideration of proposed compromises of wills containing charitable bequests, participating in suits of such trustees and of charitable corporations for instructions, participating in litigation respecting the application *cy pres* of charitable funds no longer able to be applied precisely upon the terms of the original gifts, and like matters, have occupied a large proportion of the time of one assistant.

Compulsory Automobile Insurance.

The Attorney General has been closely concerned with the preliminary steps taken toward putting into effect the provisions of the Compulsory Automobile Liability Security Act (Acts of 1925, c. 346 as amended). Several advisory opinions requested by the Commissioner of Insurance and the Department of Public Works were rendered with relation to rate-making and other duties under Acts of 1925, c. 342, essential to the proper operation of the law, as well as to the proper interpretation of chapter 346. Five petitions were entered against the Commissioner in the Supreme Judicial Court to review the rates established by him. These were referred to a master and were tried by Assistant Attorney General Roger Clapp. The cases are still before the court.

The law requires that an assistant attorney general shall be one of the three persons constituting the Board of Appeal, provided for by chapter 346. The authority of this Board under the statute is broad and the proper discharge of its duties of the greatest importance, not only to the insurers and automobile owners but to the general public. It has already rendered valuable service in making plain the relative rights and duties of the insurance companies and of the car owners. Mr. Clapp was designated as a member of the board and serves thereon.

The Commonwealth's Claim for Expenses incurred by it in the Defense of the United States at the Request of the President.

On October 14, 1861, the Secretary of State, William H. Seward, addressed a communication to His Excellency John A. Andrew, Governor of the Commonwealth at that time, calling his attention to the defenseless condition of the coast of Massachusetts in case of a foreign invasion. The communication read in part as follows:

The President has directed me to invite your consideration to the subject of the importance of perfecting the defenses of the State over which you preside, and ask you to submit the subject to the consideration of the Legislature when it shall have assembled. . . . The expenditures ought to be made the subject of conference with the Federal government. Being thus made with the concurrence of the Governor for the general defense, there is every reason to believe that Congress would sanction what the State would do and would provide for its reimbursement. Should these suggestions be accepted, the President will direct proper agents of the Federal government to confer with you and to superintend, direct and conduct the prosecution of the system of defenses of your State.

The Commonwealth made the improvements necessary to strengthen Boston Harbor and also to fortify the coast, but was obliged to borrow the money, issuing five per cent twenty-year bonds for that purpose. They were authorized by the Massachusetts Act of March 23, 1863, and were made payable, principal and interest, in coin. After these improvements were made, the Commonwealth presented a claim to the Federal Treasury Department for reimbursement, which was disallowed. Subsequently, however, in 1884, Congress passed an act providing as follows:

That the proper accounting officers of the Treasury Department be, and are hereby, authorized and directed to examine the claim of the State of Massachusetts for expenses incurred and paid, at the request of the President and Secretary of State, during the war, in protecting the harbors and strengthening the fortifications on the coast, . . . and report the amount to Congress.

Under the provisions of this act the accounting officers found that the sum of $209,885.61 should be refunded to Massachusetts; said amount not, however, including any interest which the State had paid on this borrowed money.

When the Commonwealth presented its claim under the abovementioned act, it also asked reimbursement for the money which it had paid for interest and premiums on this bond issue. This claim, however, was disallowed by the Comptroller of the Treasury on the ground that the Act of Congress authorized only the payment of the amounts expended and made no mention of interest.

It appeared that the Massachusetts claim was precisely parallel to that of the State of New York, which was decided by the Supreme Court of the United States, 160 U. S., p. 598. This decision allowed interest incurred and paid by such State in obtaining the money for which reimbursement was allowed under another act. That this decision was regarded by the Treasury Department as an authority

in support of this claim is shown by a letter of the Comptroller transmitted to the Secretary of the Treasury in 1911, referring to the Massachusetts claim, from which the following is an extract:

> I see no reason why the interest necessarily incurred and paid by the State on the bonds issued for the coast defense should not be allowed as a part of the costs incurred by the State in accordance with the decision of the Supreme Court in the New York case.
>
> As the money expended for coast defense was secured from bonds issued after the act of the Massachusetts Legislature which provided for payment in gold or silver coin of the interest and principal of all bonds hereafter issued, there was a legal contract between the State and the holders of said bonds when issued for the payment of principal and interest in coin. The additional cost of said coin was therefore a part of the costs incurred by the State in the matter of the coast defense.

The amount of this claim is stated in a letter of B. F. Harper, auditor, in a communication to the Secretary of the Treasury, under date of January 11, 1911. Mr. Harper found that the total expense of Massachusetts on account of interest and gold premium on bonds issued for coast defense purposes was $233,885.82. He further stated:

> The expense thus incurred by the State of Massachusetts for interest and gold premium on its coast-defense bonds to the amount above stated is of the same character as that paid by the State on its bonds issued in the year 1862 and reimbursed under the act of July 27, 1861.

Following the decision of the Supreme Court of the United States mentioned above, many other States have presented claims of this same nature which have been allowed by Congress.

In 1916 the Committee on Claims of the Senate reported that they were of the opinion that Massachusetts should be reimbursed for this interest, and recommended favorable action. Although a favorable report was made by this committee having the bill in charge in the Sixty-second Congress, it did not become a law.

In the Sixty-fourth Congress a bill was introduced, and passed, conferring jurisdiction on the Court of Claims to adjudicate the claims of Massachusetts. The case was presented to the Court of Claims, and in April, 1917, the court rendered its decision.

A reading of the opinion of the Court of Claims discloses that, although it was found that the money had been expended by Massachusetts for the purposes stated, the conclusion was reached that there was no act of Congress authorizing the court to render judgment for the sum so expended by Massachusetts for interest and premium. In the opinion the court said:

We have been cited to no law of Congress promising to repay Massachusetts any part of the money so expended by her, from which it follows that, however generous and patriotic this action on the part of the State may have been, she has no legal status in this court for the repayment of the same.

In 1921 the then Committee on Claims again reported favorably, and stated in part as follows:

The decision of the court (the Court of Claims) was based upon a technical construction, and your committee is of the opinion that had there been a law in existence authorizing the payment of the money to Massachusetts, the court would have rendered judgment in favor of the State. Justice and equity would seem to demand the reimbursement of the State of Massachusetts for her outlay made at the request of the President of the United States and for the benefit and in the interest of the United States, and as there appears to be no law under which payment can be made it is necessary for Congress to enact legislation for the relief of the State.

Despite this favorable finding, the Sixty-sixth Congress did not pass the necessary remedial legislation. Last spring the Senate passed a bill providing for the reimbursement to Massachusetts of this sum of $233,885.82. The matter was then heard before the War Claims Committee, and the Attorney General appeared before the Committee on April 29, and argued the claim of Massachusetts. Representatives Robert Luce and George R. Stobbs also entered their appearances and argued on behalf of the Commonwealth. The decision was again adverse.

The claim of Massachusetts is a meritorious one, and I recommend its vigorous prosecution by the incoming Attorney General, and ask that he have the concerted aid of all the representatives from this State now serving in Washington.

Centralization of the Law Business of the Commonwealth.

The first act purporting to define in detail the duties of the Attorney General was St. 1832, c. 130. So long as the government of the Commonwealth was administered directly by its constitutional officers, the Attorney General handled substantially all the law business of the Commonwealth. Subsequently, however, there grew up the practice of committing much of the administrative work of the government to commissions. Gradually the practice grew of having the legal work of such commissions handled by attorneys employed by them under authority of the statutes creating such commissions. The attention of the General Court was called to this anomalous condition of things

by Governor Greenhalge. In his message to the General Court in January, 1896, he recommended:

> Reorganize and enlarge the law department of the Commonwealth, let the Attorney General have compensation sufficient to command his whole time, furnish the department with all the assistants or deputies necessary to perform substantially all the law business of the Commonwealth in the way of advising the several administrative departments or furnishing other legal assistance. In this way more unity of system and of legal and consistent policy will be obtained than by committing this responsibility and labor to a dozen or a score of attorneys acting without reference to any general plan or purpose.

In consequence of the Governor's recommendation a statute was enacted in 1896, which provided that all the law business of the Commonwealth should be conducted by the Attorney General or under his direction. Under this act the Department of the Attorney General became, under the direction of Mr. Knowlton, once more what it was undoubtedly originally intended to be, the law department of the Commonwealth having charge of its business.

In one of his annual reports to the Legislature Mr. Knowlton stated that the wisdom of the act had been fully justified. "The law work", he said, "being concentrated in one department and under one control has been systematized and done more economically and to better advantage. The act commits the responsibility of the conduct of the law business of the Commonwealth and of this department to an officer chosen directly by the people of the Commonwealth, to whom he in turn is responsible; and to that extent is in conformity with the spirit of the Declaration of Rights, which asserts as a fundamental principle of government that all power resides originally in the people and that the officers of the government are at all times accountable to them."

For over thirty years the law business of the Commonwealth has been done by and under the control of the law department, carrying out the recommendations of Governor Greenhalge, Attorney General Knowlton and the mandate of the Legislature.

Recently it came to my attention, while examining the Griffenhagen report, that there were a few instances where special counsel were being placed in some of the State administrative departments. I doubt if any such situation was contemplated by the Legislature, and I am quite certain that it is not expedient. I recommend that if it is necessary to have special counsel assigned to any of the State departments, boards or commissions they be designated by the Attorney General and subject to his control.

The Office of the Attorney General.

The office of Attorney General is of considerable antiquity. It was one of the institutions of the common law brought to this country by the early settlers, and its functions constituted a part of the body of the common law generally recognized as a part of our jurisprudence. The office was recognized as already in existence by the Province Laws, 1693–4, c. 3, § 12.

The Attorney General is vested by the common law with a great variety of duties in the administration of government. As the chief law officer of the State he may, in the absence of some express legislative restriction to the contrary, exercise all power and authority as public interest may from time to time require. He may institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and the protection of public rights. In addition to his common law powers, many important functions, powers and duties have been prescribed by the Legislature from time to time. The more important are as follows:

The Attorney General appears for the Commonwealth, the Governor, the Executive Council, the Secretary, the Treasurer and Receiver General, the Auditor, and for State departments, officers, boards and commissions in all suits and other civil proceedings in which the Commonwealth is a party, or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the Commonwealth, and in such suits and proceedings before any other tribunal when requested by the Governor or by the General Court or either branch thereof. All legal services required by such officers, boards and commissions in matters relating to their official duties are rendered by the Attorney General or under his direction. He also consults with and advises the district attorneys in matters relating to their duties, and if the public interest so requires he may assist and appear for the Commonwealth in the trial of indictments for capital crimes.

He is empowered to enforce the due application of funds given or appropriated to public charities within the State, to prevent breaches of trust in the administration thereof, and, if necessary, to prosecute corporations which fail to make to the General Court returns required by law.

He gives opinions upon questions of law submitted to him by the Governor and Council, or by either branch of the General Court.

He, or some person designated by him, upon vote of a legislative committee, is required to appear before such committee and advise it upon the legal effect of proposed legislation pending before it.

He may bring action in the name of the Commonwealth against a corporation or any officer thereof, to restrain monopolies, discrimination in the sales of articles in common use, etc.

He may file with the Supreme Court informations in equity in order to restrain by injunction corporations from doing business not authorized by their charters.

He may institute, upon information given by the Commissioner of Banks, prosecutions for violations of the banking law.

He may file informations in equity to recover the penalty imposed by law upon any person who breaks up or removes a wrecked or abandoned vessel without securing the required license from the Department of Public Works.

He may institute and prosecute proceedings for enforcement of the act which requires cities and towns receiving water from the Metropolitan Water System to equip their water service with meters.

He approves town by-laws and zoning laws.

He passes in certain cases upon proposed settlements of taxes on collateral legacies or successions or future interests in legacies or successions, which may be effected by the Treasurer and Receiver General, if the Attorney General approves.

He acts with the Commissioner of Corporations and Taxation in recommending abatements by the Board of Appeal of unpaid and uncollectable taxes assessed on the corporate franchises of domestic corporations.

He passes upon instruments of conveyance of and titles to all land purchased by the Commonwealth, notably for highways, reforestation or experiment in forest management.

He may bring action against savings bank corporations which fail to pay the fee required for examination and audit of their books by the Commissioner of Banks in order to recover such fee.

He takes cognizance of all violations of law or of court orders which affect the general welfare, including combinations in restraint of trade, and institutes or causes to be instituted before the proper tribunal criminal or civil proceedings to punish such violations.

He investigates, if the Governor so requires, the grounds of any demand made by the authorities of another State for the extradition of a fugitive from justice, or of any application made to the Governor

for the extradition from another State of a fugitive from justice in this State, and reports to the Governor all material facts, with an abstract of the evidence, and, in case of a person demanded, with an opinion as to the legality or expediency of complying with the demand.

His annual report to the General Court includes the cases tried or argued or directed by him during the year, with suggestions and recommendations as to the amendment and the proper and economical administration of the laws.

With the approval of the Governor and Council, he prepares and publishes such report of capital trials as he deems expedient for public use.

He enforces the collection of money due on the bonds, notes and securities listed in accounts transmitted to him by the Treasurer and Receiver General under the provisions of G. L., c. 10, § 9.

If in his judgment the public interest requires, he may prosecute informations or other processes against persons who intrude on the land, rights or property of the Commonwealth.

He institutes in the name of the Commonwealth appropriate civil proceedings or refers the cases to the proper district attorneys to enforce the provisions of the corrupt practices act.

He assists the Board of Boiler Rules in framing rules for the construction, installation and inspection of steam boilers.

He enforces, at the relation of the Commissioner of Insurance, the provisions of the insurance law.

He has the right to be present personally or by an assistant at the deliberations of any grand jury, whenever his public duty seems to him to require it.

He may, with the approval of the Chief Justice of the Superior Court, call a special grand jury to hear such matters as he may present.

He has authority, at the relation of the Department of Public Utilities, to recover all forfeitures incurred by officers of municipal light plants, gas and electric companies, who fail to file annual returns as required by law.

He may, at the relation of the Commissioner of Corporations and Taxation, bring actions in contract against tax collectors to recover taxes which remain uncollected at the end of two years from the commitment of any warrant.

He is a member of the State board which decides whether or not public necessity requires a right of way for access to any great pond within the Commonwealth.

He is required to investigate all claims against the Commonwealth which may be presented to him, where there is no statutory authority whereby the claimant may prosecute his claim by suit, at law or in equity, or where no other mode of redress is provided by law.

He may, at the relation of the Commissioner of Insurance, proceed in equity to restrain all violations of law by fraternal benefit societies.

The Constitution requires that all initiative petitions must be submitted to the Attorney General for his consideration. If the Attorney General certifies that a measure is in proper form for submission to the people, it may then be filed with the Secretary of the Commonwealth.

He is required to determine whether or not applications for submission to voters of questions of public policy contain questions that are, as a matter of law, those of public policy.

He is also, with the Secretary of the Commonwealth, required to draft such questions in proper form for presentation upon the ballot.

He, or an assistant designated by him, is a member of the board of appeal on motor vehicle liability policies.

He is required to prepare brief statements as to measures submitted to the people under the initiative and referendum, which are printed in pamphlet form and sent to all the voters in the State.

He designates a member of the board who passes upon the sale and disposition of old and obsolete records, books and documents of the Commonwealth.

He is required to proceed against county officers who fail to comply with the provisions of the statute relative to the keeping of accounts.

At the relation of the Adjutant General, he is authorized to bring an information in equity against any municipality failing to comply with requirements of the law to provide armories and headquarters.

He is required to record in the registry of deeds certificates of revocation of licenses of structures in Boston Harbor.

He is authorized to bring suit to recover forfeitures on bonds filed in connection with the licensing of boxing matches.

Proceedings to enforce the law relative to the protection of the Charles River from pollution are prosecuted by the Attorney General.

At the relation of the Division of Waterways, he is required to institute proceedings to enjoin or abate unlicensed structures in the Connecticut and Merrimac Rivers.

At the relation of the Commissioner of Insurance, he may apply for an injunction to restrain assessment insurance companies which exceed their powers or fail to comply with any provision of law, or conduct business fraudulently.

At the relation of the Department of Public Utilities, he may proceed against common carriers for violation or neglect to comply with provisions of law relating to common carriers.

He enforces the penalties against railroads for violation of law relative to signs at crossings.

He has authority to recover the expenses of examination in cases of savings and loan associations.

He may apply to the Probate Court for payment to the State Treasurer by savings banks of all deposits which have remained unclaimed for more than thirty years.

He approves the form of the bonds of county treasurers.

He may, notwithstanding a medical examiner's report that the death was not caused by the act or negligence of another, direct an inquest to be held.

He is required to cause prosecutions to be instituted for violations of the law relative to legislative counsel and agents.

Written permission of the Attorney General is required before any person may use a dictograph or dictaphone for the purpose of procuring information concerning any official matter or to injure another.

He is a member of the board which passes upon requests for emergency appropriations by cities and towns.

He is required to approve the form of employment certificates.

He approves the fire district by-laws.

He enforces the laws relative to municipal finances.

It appears as a matter of record that the volume of business receiving the attention of the office has increased tremendously in recent years.

It is interesting to note that in 1894, the first year of Mr. Knowlton's incumbency of the office, the number of cases requiring attention was but 549, and in 1900 the number was increased only to 1,801. As will be seen by the table contained in this report, the number of cases requiring attention during the past year was 10,456.

No satisfactory record can be kept of consultations with State officers, boards, departments and commissions, except in cases in which official opinions in writing are required, of which there were 553 the past year.

It has become more and more the practice of officials in all branches of the government of the Commonwealth to consult with this office. Many such consultations are held daily, and much of the time of the Attorney General and of his assistants has been so occupied.

The collections of the Department for the fiscal year were $157,791.20.

Four hearings were held before the Supreme Court of the United States. Three cases were tried in the United States District Court, one in the Circuit Court of Appeals, one case tried before the United States Court of Claims and one before the Interstate Commerce Commission. Twenty-seven cases have been argued before the Supreme Judicial Court of this Commonwealth, and there have been sixty-one hearings and trials before a single justice of that Court. There have been thirty-nine hearings and trials in the Superior Court. Six cases have been tried in the Probate Courts, and five in the Land Courts. Three cases have been prosecuted in the local District Courts. The Department has been in attendance at twenty-one hearings before the Industrial Accident Board and twenty hearings have been held in extradition cases, one of them being before the Governor of North Carolina, another before the Governor of Texas, and arguments presented in the District Court at Houston, Texas, and the Court of Criminal Appeals of Texas.

Of the four hundred and fifty-four acts and resolves passed at the last session of the Legislature four hundred and nineteen, when engrossed, were referred to the Attorney General by the Governor, and reports given in writing as to their legal form and constitutionality.

Two hundred and seventy contracts and seventy-six instruments of conveyance submitted by various State departments were passed upon as to matters of legal form.

Our General Laws provide that before town by-laws, building, plumbing, electric wiring, and other regulations can take effect they must be submitted to the Attorney General for approval. During the past year seventy-six sets of town by-laws and other regulations were passed upon.

Certain changes have been made in the personnel of the Department during the year.

On February 2, 1926, Lewis Goldberg, Esq., after nearly five years of faithful and efficient service as an Assistant Attorney General, resigned to accept an appointment to an Associate Commissionership in the Department of Public Utilities. While Assistant Attorney General, Mr. Goldberg performed the duties assigned to him with conspicuous ability and the meritorious performance of his work deserves high commendation.

On March 18 last, Jacob L. Wiseman, Esq., of Boston, was appointed an Assistant Attorney General.

On November 10 last, James H. Devlin, Esq., retired from the position of Assistant Attorney General, having been appointed by His Excellency the Governor to be an associate justice of the Municipal Court of the City of Boston.

As Assistant Attorney General, Mr. Devlin performed the duties assigned to him with fidelity and efficiency, rendering valuable public service.

No appointment was made to fill the vacancy caused by the retirement of Mr. Devlin.

When Mr. Wyman left the office in January, 1920, he recommended an increase in the salary of the Attorney General. He stated, "The salary of the Attorney General, concededly the office second only in importance to that of the Executive, has remained at the present figure for eight years. The salaries of the heads of various commissions, of some district attorneys and of the judges of the Supreme and Superior Courts are in excess of his salary."

I have for some time been of the opinion that the present salary is inadequate to the importance of the duties performed, but I have not hitherto deemed that I was justified in recommending an increase in my own favor. That reason no longer exists. It is proper that the salary of the Attorney General should approximate the salaries of the justices of the Supreme Judicial Court, whose principal officer he is. I recommend the enactment of legislation to that end.

Not only is the work of the office growing year by year in amount, but its importance also increases. Notwithstanding a number of criminal cases which have required attention, the principal labor and responsibility in the discharge of the duties of this office have arisen from the civil business. This civil business of the Commonwealth to which the assistants are called upon to give attention requires, by reason of its extent, variety and character, a high degree of legal ability, and is exclusive of private law practice.

In taking leave of this office I desire to express my profound appreciation of the loyalty, fidelity and efficiency of the Assistant Attorneys General who have served under me. They have been from time to time as follows: Alexander Lincoln, Esq., Joseph E. Warner, Esq., Albert Hurwitz, Esq., Lewis Goldberg, Esq., A. Chesley York, Esq., James H. Devlin, Esq., A. Perry Richards, Esq., Day Kimball, Esq., Roger Clapp, Esq., Charles F. Lovejoy, Esq., Melville Fuller Weston, Esq., Alfred R. Shrigley, Esq., and Jacob L. Wiseman, Esq. All these gentlemen have served the Commonwealth with ability and devotion.

I wish further to express my appreciation of the fidelity and efficiency with which all the employees of the office have discharged their duties during my incumbency. I pay a special tribute, because of long faithful service to the Commonwealth, to Louis H. Freese, who has been in the Attorney General's office thirty-five years, Alexander D.

Robinson, thirty-three years, Harold J. Welch, twenty-three years, Miss Carrie M. Crawford, twenty-two years, and Miss Alice G. Brinn, twenty-one years.

It gives me pleasure to acknowledge the attention which the Legislature has paid to my recommendations each year. I believe that the changes thus effected, in the duties of this office and in the general laws, are in the public interest, and will be further approved by experience.

I annex to this report such official opinions rendered during the past year as it is thought may be of interest and which may properly be made public at this time.

Respectfully submitted,

JAY R. BENTON,
Attorney General.

SENATE No. 4

REPORT

OF THE

SPECIAL COMMISSION

ON

OBSOLETE LAWS

DECEMBER, 1926

BOSTON
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1926

The Commonwealth of Massachusetts

REPORT OF THE COMMISSION APPOINTED BY HIS EXCELLENCY THE GOVERNOR UNDER THE PROVISIONS OF CHAPTER 25 OF THE RESOLVES OF 1926.

[Joint Judiciary. Dec. 1, 1926.]

To the Honorable Senate and House of Representatives in General Court assembled:

Introduction.

The Resolve under which the commission was appointed is as follows:

Resolve providing for an Investigation with a View to the Repeal of Laws found to be Obsolete.

Resolved, That the governor be hereby authorized to appoint, with the advice and consent of the council, an unpaid commission of five persons for the purpose of studying the general and special laws of the commonwealth with a view to recommending to the general court the repeal of such thereof as have become obsolete or superfluous or have ceased to have any appreciable effect or influence on existing rights. The commission shall be provided with quarters in the state house, and may expend for clerical and other necessary expenses, from such appropriation as may hereafter be made, such sums not exceeding in the aggregate one thousand dollars, as the governor and council may approve.

The commission shall report to the general court its recommendations, if any, with drafts of such repealing or other legislation as may be necessary to effect said recommendations, by filing the same with the clerk of the senate not later than December first of the current year.

Pursuant to said resolve the commission was appointed on September 2, 1926, qualified without delay, and immediately began its labors; but found the time allotted inadequate to cover the subject matter involved.

It immediately secured the assistance of Messrs. Dorman and Wiggin, Counsel to the Senate and House, respectively, and also made personal studies of the General Laws, each member taking an allotted part.

On or about October 1, 1926, the commission invited all the Justices and Clerks of Courts, heads of state departments and important divisions, members of the Governor's Council, Senators and Representatives, Registers of Deeds, Registers of Probate, District Attorneys, Sheriffs, County Treasurers, County Commissioners, presidents and secretaries of bar associations and deans of law schools, to bring to the notice of the commission any laws which they thought should be considered by the commission. Personal letters were also sent to the Governor, Lieutenant Governor, and the Massachusetts members of the Supreme Court of the United States. The matter also was called to the attention of associations of city solicitors and town counsel and of city and town clerks.

The commission has received a number of replies to the letters sent out. Some heads of departments have submitted to us reports evidently based on complete and careful examinations of all the laws which they are charged with the duty of administering, and others have made helpful suggestions. We are informed that further suggestions are being prepared which have not reached us in time to be considered. The commission appreciates the assistance which it has received and thanks those who have given it.

The commission offered by public notice to hear any parties interested, at the state house in Room 222 on October 26 and 27.

Hardly any of the General Laws are wholly obsolete or incapable under any circumstances of having some effect. Such as come within this description are comprised in the following classes:

1. Statutes which are obsolete because they are absolutely disregarded and never enforced.

2. Statutes which are obsolete and without effect on existing rights because they relate solely to social institutions or things which have ceased to exist, or to persons no longer living.

3. Statutes which have no effect on existing rights because they are suspended by Federal enactment.

In view, as already stated, of the paucity of statutes coming under the foregoing three classes, the commission has not considered that its duties are restricted to them, but has also deemed it its duty to report on the following more numerous and more important classes:

4. Statutes that are superfluous and obsolete, because the reason for their enactment has ceased to exist, although they may be or are still enforced occasionally.

5. Statutes which are obsolete and superfluous, because they have become unsuited to the purposes for which they were enacted, owing to changed conditions, or to the adoption of remedies more suited to such changes.

We do not recommend the repeal of any of the special laws, because most of them were transitory in their effect, and their repeal would accomplish nothing.

The repeal of those which still are in effect would probably interfere with existing rights, so as to impair the obligations of contracts and therefore be unconstitutional.

Recommendations.

I. *The Constitution.*

The final article of the Constitution, Chapter VI, Article XI, is as follows:

> This form of Government shall be enrolled on parchment and deposited in the Secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

About half of the Constitution and the amendments thereto, as they appear, in print, are annulled provisions, enclosed in brackets, and no longer a part of the "laws of the land."

Therefore it would seem that it is no longer obligatory to print them in "all future editions of the said laws."

Although for historical reasons it may be interesting to have these annulled provisions printed, if it is desired to

print only those laws which are in force, the annulled parts of the Constitution should be omitted.

There is some obsolete matter not expressly annulled in the Constitution:

1. The words "or plantation" are superfluous at the end of the first paragraph of Chapter I, Section II, Article II, and the whole last paragraph of this article is also obsolete, since there are no longer any "plantations" in Massachusetts.

2. The last six lines in Article III in the same chapter and section, beginning with the words "provided nevertheless," are obsolete.

3. In Chapter III, Article IV, the last twenty words beginning with "until" and the whole of Article V are obsolete.

If annulled and ineffective parts of the Constitution are to be printed, these obsolete provisions do no harm.

If it is desired to print the effective laws only, these provisions should be annulled.

4. Also all of Amendment XV following the semicolon in the third line is unworkable in practice and should be annulled.

We submit herewith, as Appendix A, proposals for the constitutional amendments above recommended, and also for an amendment to make it clear that annulled provisions of the Constitution need not be printed.

II. *Laws Clearly Obsolete, Superfluous or Without Effect.*

We recommend the repeal of all such laws as in our opinion clearly come within classes 1 and 2 set forth in the introduction of this report, and we submit for that purpose the accompanying bill, Appendix B.

III. *Laws Superseded by Federal Legislation.*

A. *Insolvency Laws.* — Under class 3 we find that certain provisions of the insolvency laws are inoperative, while certain other provisions are still in force in connection with the administration of the Federal bankruptcy law, and still other provisions are in force in connection with our own statutes relative to trusts for benefit of creditors. We

recommend the repeal of the inoperative provisions, and submit the accompanying bill, Appendix C.

B. *Naturalization Laws.* — Section eighteen of chapter two hundred and twenty of the General Laws is superseded by the Federal law which permits no papers to be received except at the clerk's regularly established office. We therefore have included in Appendix C a section repealing said section eighteen.

C. *Liquor Laws.* — Undoubtedly there are now on the statute books some provisions of the liquor law, for example, those relating to saloon licenses, that have been rendered inoperative by Federal legislation. But this subject is so involved in controversy that we have not deemed it appropriate for recommendation by a commission so confined in its purposes and so limited in its duration.

IV. *Laws the Reason for which has ceased to exist or which have become Unsuited for the Purpose for which they were Enacted.*

Certain laws coming within classes 4 and 5 set forth in the introduction are clearly obsolete or superfluous. We recommend and submit herewith a bill repealing such laws, Appendix D.

There are, however, many other laws within those classes which, in our opinion, properly have no place in the system of administration and jurisprudence in force in this commonwealth. The limits of time and of money imposed upon this commission have prevented it from giving such laws the study which the subject deserves.

V. *Constructive Amendments.*

In addition to the class of laws discussed in the last preceding paragraph, as to which we have not made recommendations, there are numerous provisions, sections and even whole chapters of our General Laws as to which we have made no recommendation, because they require constructive amendment or revision rather than mere repeal in order to bring them up to date and make them conform

to existing needs, and we have no authority to recommend legislation other than repeal.

VI. *Recommendations and Suggestions for Further Study.*

Among the matters that have come to our attention to which the last two preceding paragraphs apply are the following: —

(1) The rights of dower, curtesy and homestead in real estate. It is suggested that dower and curtesy serve only to embarrass persons dealing in real estate and to make titles uncertain, without benefiting anybody. An estate of homestead is exempt from attachment, execution, conveyance, descent and devise. It is limited in amount to eight hundred dollars. It would seem that the amount should be increased or the institution abolished. At present it serves only to make flaws in titles.

(2) The ancient office of Justice of the Peace. Nearly all the powers of justices of the peace have been given by law to Notaries Public. It is suggested that the few remaining powers should be given to Notaries Public, or otherwise disposed of, and the office of Justice of the Peace abolished.

(3) Query whether the time has not arrived when the office of Trial Justice should be abolished, with whatever slight changes are necessary in the organization of our district courts to take care of the small amount of business now done by trial justices?

(4) Query whether the office of Master in Chancery should not be abolished and such of its duties as cannot be performed by justices and clerks of courts given to bail commissioners or other officers?

(5) It has been suggested to us that there are no licenses issued by county treasurers to which section seventeen of chapter thirty-five of the General Laws may apply. The suggestion was made too late to permit us to make the necessary inquiry among county treasurers throughout the commonwealth, and we therefore, make no specific recommendation.

(6) The election laws apparently contain provisions that

are practically obsolete. This probably is true of the last part of chapter fifty-three of the General Laws, relative to caucuses, and may be true of considerable parts of chapters fifty-five and fifty-six, relative to corrupt practices, election inquests and violations of election laws. We have been unable, in the time at our disposal, to ascertain the facts.

(7) While we have succeeded in finding few provisions of the tax laws which we are satisfied are obsolete, we believe that the general revision thereof which we understand is contemplated will disclose other provisions which are inoperative or not in accord with modern practice.

(8) We recommend further study of chapters sixty-seven and sixty-eight of the General Laws, relative to parishes and religious societies and donations and conveyances for pious and charitable uses. We have found in these chapters inconsistent and conflicting provisions, many of which are not in accord with modern practice; but in the time at our disposal we have been unable to give the subject sufficient consideration to make any specific recommendation.

(9) We recommend that consideration be given to the question whether the speed limits of twenty, fifteen and eight miles an hour, provided by section seventeen of chapter ninety of the General Laws, although only prima facie evidence of excessive speed, are not so contrary to modern practice in the enforcement of the automobile laws as to be a proper subject of change.

(10) We recommend the further study of chapter ninety-four of the General Laws, relative to the inspection and sale of food, drugs and various articles. We have already discovered a number of obsolete provisions in this chapter and we recommend their repeal in another part of our report, but we are of opinion that further study would disclose additional obsolete provisions and other provisions which are so antiquated that they ought not to remain in force, at least in their present form.

(11) We suggest that consideration be given to the question whether chapter ninety-five of the General Laws, relative to the measuring of leather, is not in whole or in part out of accord with modern methods and practice.

(12) We are informed that sections two to seven, inclusive, of chapter ninety-seven of the General Laws, relative to surveyors' compasses and other apparatus are not complied with in practice. We recommend that further study be given to determine whether these sections should be repealed, or measures taken for their enforcement or some substitute provided.

(13) Sections fifty-seven to sixty-one, inclusive, of chapter one hundred and twenty-three of the General Laws provide for a six man jury in insanity cases. It has been suggested to us that these ancient provisions have fallen into disuse and might well be dispensed with. We have not, however, made sufficient inquiry to be able to say that they are absolutely obsolete.

(14) We believe that further study of chapters one hundred and thirty and one hundred and thirty-one of the General Laws, relative to fisheries and game, would disclose obsolete provisions.

(15) We suggest that chapter one hundred and forty of the General Laws, relative to licenses, merits further study than we have been able to give it. It is, perhaps, unnecessary to single out any provisions of this chapter as subjects for examination, although it seems to us that the provisions for punitive damages against owners of dogs are not in accordance with modern ideas of civil responsibility.

(16) We are satisfied that the corporation laws contain numerous redundant, superfluous and archaic provisions. In another part of this report we have recommended the repeal of chapter one hundred and sixty-three of the General Laws, relative to trackless trolley companies. We doubt very much the wisdom of keeping in effect, at least as to any future corporations, chapter one hundred and seventy-nine, on proprietors of wharves, real estate lying in common, and general fields. In this connection, see also General Laws, chapter two hundred and twenty-three, section twenty-eight, part of which should be repealed if it is found that there are no such existing proprietors. We believe that chapter one hundred and fifty-seven, relative to co-operative corporations, chapter one hundred and sixty-five, relative to water and aqueduct companies, and chapter

one hundred and eighty, relative to corporations for charitable and certain other purposes, may contain provisions which are obsolete or superfluous, and that the entire subject of corporations merits revision to bring the law up to date and eliminate redundant and superfluous provisions.

(17) It has been suggested to us that notice by publication or posting of the appointment of an administrator or executor is a survival of other days and that the only effect of this requirement at present is to cause expense and, when the requirement is not complied with, to subject beneficiaries of estates to delay and expense and often to invalidate titles to real estate.

(18) We believe that section seventeen of chapter two hundred and eleven of the General Laws, providing for jury sittings of the Supreme Judicial Court, is superfluous and ought to be repealed; but we think that this matter should be given further study and that there should be legislation, if necessary, to provide for issues to a jury in the Superior Court or removal to that court, in all cases where the law does not already so permit. In connection with this matter it would probably be necessary to revise section thirty-four of chapter two hundred and fourteen of the General Laws, relative to framing of issues, and to repeal section thirty-four, relative to a special jury in the Supreme Judicial Court.

(19) The provisions of sections fourteen and fifteen of chapter two hundred and twelve of the General Laws, providing for statutory sittings of the Superior Court, are exceedingly unbusinesslike and hamper the court in attending to the great volume of litigation over which it has jurisdiction. We believe that consideration should be given to the question whether the times and places of the sittings of the Supreme Judicial and Superior Courts should not be left entirely to the courts, rather than made a matter of statutory regulation.

(20) No appeals from district courts are possible under modern statutes, except in rare cases, such as summary process and replevin, because the law now provides for the removal of all other cases to the Superior Court before

trial, instead of appeal. Nevertheless the General Laws contain many references to appeals from district courts. It is believed that it would be possible to eliminate some of these references.

(21) In chapter two hundred and twenty-nine of the General Laws, actions for death and injuries resulting in death, the varied amounts payable as damages for loss of life are antique survivals, and there is no good reason for not having a uniform amount under all sections of the chapter. To propose, however, an act embodying such a change would be beyond our powers.

(22) We believe that the exemptions permitted by law from attachment and execution, particularly section thirty-four of chapter two hundred and thirty-five of the General Laws, should be studied with a view to making these exemptions more modern.

(23) We suggest the further consideration of chapter two hundred and forty-four of the General Laws, to see whether the method of foreclosure by suit provided for in that chapter has not been in practice superseded by foreclosure under power of sale in a mortgage.

(24) We suggest that chapter two hundred and fifty-three of the General Laws, relative to mills, dams and reservoirs, should be further examined to see if its provisions are out of date and need revision.

(25) Chapter two hundred and fifty-four of the General Laws, relative to liens on buildings and land, is seldom used. The chapter is quite recent and cannot be called entirely obsolete, but if it is to be used at all, it would seem that it might be made much more workable.

(26) The study of the subject of costs comes primarily within the jurisdiction of another commission of this commonwealth. No doubt it should receive attention, in order to make the costs in civil actions more in accordance with modern conditions. It has also been called to our attention that the expenses allowed to prisoners in jail in certain cases are based upon ancient standards of living, and we believe that this should be considered in connection with an investigation involving the entire criminal law.

(27) It seems that the fees of certain officers provided in chapter two hundred and sixty-two of the General Laws might well be examined, to see if changes should not be made to bring this entire chapter into accord with modern standards.

To bring up to date the foregoing laws, and doubtless many others not specified, would require a commission with ample time and resources necessary to pursue an inquiry of this magnitude. It is not possible to determine, by mere reading of a law, whether it is obsolete, superfluous, without effect on existing rights, or unsuited to modern conditions. Careful and specific inquiry must be made of officers charged with its enforcement and others concerned with its operation. Laws that have fallen into disuse in the cities are often of important application in remote country towns, and great care must be taken to avoid injurious interference with existing institutions and rights by hasty repeal or amendment.

Any such commission should, of course, have powers broad enough to deal not only with laws that are wholly obsolete, superfluous and without effect on existing rights, but also with laws that have become injurious rather than helpful, or have ceased to function effectively, because out of accord with modern conditions. Also it should have power to recommend constructive amendments as well as repeals. As to most subjects the law is like a woven fabric, no part of which can be removed without carefully joining the loose ends that are left.

VII. *More Frequent Revisions.*

Up to the present time, obsolete and archaic laws have been dealt with in this commonwealth only when some flagrant abuse has come to public attention or in connection with revisions of the General Laws, once in twenty years. In the progress of our civilization, laws frequently become obsolete or out of date within twenty years after their enactment, and numerous others contained in a revision have become obsolete and out of date before the next re-

vision. Thus, many laws become obsolete and remain so for a long time without correction.

Nearly all other states revise their laws much oftener than every twenty years, and now that provision exists for embodying all new legislation in the General Laws (G. L., ch. 3, secs. 51–55, inclusive) there is no serious obstacle to more frequent revisions in Massachusetts. We, therefore, suggest the advisability of more frequent revisions, beginning in the near future. In view, however, of the many archaic and obsolete laws to which we have called attention in this report, we believe that a thorough study, with a view to making specific recommendations for their correction, should precede such next revision.

In Conclusion.

As the result of our brief examination and study of the laws of general application of this commonwealth, we are satisfied that, as human institutions change, laws rapidly become obsolete. Some become dead letters, the persons, things or rights to which others apply cease to exist, others are suspended by Federal enactment, others are practically superseded by later statutes better adapted to cover the same subject matter, the reasons for others cease to exist, and many become ill-suited to the changed conditions which they are required to meet. Where we have been able to satisfy ourselves that a law or provision comes within the foregoing classification, and that the situation can be met by simply repealing it or striking it out, we have made that recommendation. Where we have been unable to make a sufficiently complete study to satisfy ourselves, or have felt that constructive legislation was necessary to meet the situation, we have merely suggested the matter for consideration.

We feel that we have been given time and authority, and allowed funds, sufficient merely to open up a subject of large importance. The life of the law is enforcement. We believe that any legislative body can with great profit apply itself to following the operation of existing laws, with

a view to keeping them up to date. We are of opinion that frequent intelligent study of the entire body of our general statute law, with a view to keeping it adapted to rapidly changing conditions, will be of great benefit to the administration of the government of the Commonwealth and its political subdivisions, to the administration of justice, to the conduct of business, and to every phase of the life of the individual in relation to the community.

Respectfully submitted,

AUGUSTUS P. LORING, *Chairman.*
FELIX FRANKFURTER.
ARCHIE N. FROST.
GEO. LOUIS RICHARDS.
GEORGE P. DRURY, *Secretary.*

DECEMBER 1, 1926.

Appendix A.

Proposals for Certain Legislative Amendments of the Constitution of the Commonwealth, annulling Various Obsolete Provisions thereof.

A joint session of the senate and house of representatives hereby declares it to be expedient to alter the constitution by the adoption of the following articles of amendment, to the end that they may become a part of the constitution, if similarly agreed to in a joint session of the next general court and approved by the people at the state election next following: —

Articles of Amendment.

1. Article II of section II of chapter I of the constitution of the commonwealth is hereby amended by striking out, in the first paragraph, the words "or plantation", and also the last paragraph.

2. Article III of section II of chapter I of the constitution of the commonwealth is hereby amended by striking out all of said article following the word "accordingly."

3. Article IV of chapter III of the constitution of the commonwealth is hereby amended by striking out all of said article after the word "places" where it occurs a second time.

4. Article V of chapter III of the constitution of the commonwealth is hereby annulled.

Proposal for a Legislative Amendment of the Constitution of the Commonwealth relative to the Printing of Copies thereof in the Book containing the Laws of the Commonwealth.

A joint session of the senate and house of representatives hereby declares it to be expedient to alter the constitution by the adoption of the following article of amendment, to the end that it may become a part of the constitution, if similarly agreed to in a joint session of the next general court and approved by the people at the state election next following: —

ARTICLE OF AMENDMENT.

Article XI of chapter VI of the constitution of the commonwealth is hereby amended by inserting after the word "thereof" the following: —, omitting such provisions as have been expressly superseded or annulled.

APPENDIX B.

AN ACT REPEALING CERTAIN PROVISIONS OF LAW WHICH ARE OBSOLETE AND WITHOUT EFFECT ON EXISTING RIGHTS.

Be it enacted, etc., as follows:

POOR LAWS.

1. *Workhouses.*

SECTION 1. Section one of chapter forty-seven of the General Laws is hereby amended by striking out, in the first line, the words "a workhouse or" and inserting in place thereof the article: — an, — and by striking out all of said section after the semicolon in the third line down to and including the word "town" in the ninth line, — so as to read as follows: — *Section 1.* A town may erect or provide an almshouse for the employment and support of indigent persons maintained by or receiving alms from it; and of other persons sent thereto under authority of law.

Note to Sections 1 to 18, inclusive. — The institution known as the workhouse has disappeared. Accordingly, we recommend the repeal of numerous sections and the striking out of numerous provisions of the General Laws relative to workhouses.

Note. — All references to sections and chapters contained in the various notes hereinafter appearing shall be to the General Laws unless otherwise expressed.

SECTION 2. Section three of said chapter forty-seven is hereby amended by striking out, in the first line, the words "a workhouse or" and inserting in place thereof the article: — an, — so as to read as follows: — *Section 3.* A town which has an almshouse may annually choose three, five, seven or more directors to have the management thereof, who may appoint a master and assistants. If such directors are not chosen, the overseers of the poor shall be the directors.

SECTION 3. Section five of said chapter forty-seven is hereby amended by striking out, in the second line, the words "a workhouse or" and inserting in place thereof the article: — an, — so as to read as follows: — *Section 5.* Any number of towns may, at their joint charge and for their common use, erect or provide an almshouse and purchase land for the use thereof.

SECTION 4. Section fourteen of said chapter forty-seven is hereby amended by striking out, in the second line, the words "workhouse or", — so as to read as follows: — *Section 14.* No more persons from a town shall be received into such almshouse than such town's proportion therein, when they would exclude or inconvenience those belonging to other towns interested.

SECTION 5. Sections nineteen, twenty, twenty-one, twenty-two and twenty-five of said chapter forty-seven and section four of chapter one hundred and seventeen of the General Laws are hereby repealed.

SECTION 6. Section twenty-three of said chapter forty-seven is hereby amended by striking out, in the first line, the words "A workhouse or" and inserting in place thereof the article: — An, — so as to read as follows: — *Section 23.* An almshouse may be discontinued or appropriated to any other use if towns interested so determine.

SECTION 7. Section one hundred and eight of chapter one hundred and eleven of the General Laws is hereby amended by striking out the comma in the first line and inserting in place thereof the word: — or, — and by striking out, in the same line, the words "or workhouse", — so as to read as follows: — *Section 108.* If a prisoner in a jail or house of correction has a disease which, in the opinion of the physician of the board of health or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, in writing, direct his removal to a hospital or other place of safety, there to be provided for and securely kept until its further order. If he recovers from the disease, he shall be returned to his former place of confinement. If the person so removed has been committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of

the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

SECTION 8. Section two of chapter one hundred and seventeen of the General Laws is hereby amended by striking out, in the fifth line, the words "workhouse or", — so as to read as follows: — *Section 2.* The overseers of the poor, hereafter in this chapter called the overseers, shall have the care and oversight of all such poor and indigent persons so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported and employed, either in the almshouse, or in such other manner as the town directs, or otherwise at the discretion of the overseers. They may remove to the almshouse children suffering destitution from extreme neglect of dissolute or intemperate parents or guardians, except as otherwise provided.

SECTION 9. Section twenty-one of said chapter one hundred and seventeen is hereby amended by striking out, in the first line, the words "or workhouse", — so as to read as follows: — *Section 21.* A person receiving aid in an almshouse of a town may be required by the officer in charge thereof to perform such labor as the official physician shall certify is suitable for him.

SECTION 10. Section twenty-one of chapter one hundred and twenty-six of the General Laws is hereby amended by striking out the comma in the first line and inserting in place thereof the word: — or, — and by striking out, in the first and second lines, the words "or superintendent of a workhouse", — so as to read as follows: — *Section 21.* The keeper of a jail or master of a house of correction to which a female has been committed shall forthwith transmit to the commissioner of correction such an abstract of the mittimus upon which she has been committed as he may require.

SECTION 11. Section ninety-five of chapter one hundred and twenty-seven of the General Laws is hereby amended by striking out, in the second line, the word ", workhouse", — so as to read as follows: — *Section 95.* If the mother of a child under eighteen months is imprisoned in a jail, house of correction or other place of confinement and is capable and desirous of taking care of it, the keeper shall, upon the

order of the court or magistrate committing her, or of any overseer of the poor, receive the child and place it under the care and custody of its mother.

SECTION 12. Section one hundred and forty of said chapter one hundred and twenty-seven is hereby amended by striking out, in the second line, the words "penal institutions commissioner" and inserting in place thereof the words: — commissioner of institutions, — by striking out the comma in the third line and inserting in place thereof the word: — or, — and by striking out, in the same line, the words "or workhouse", — so as to read as follows: — *Section 140.* If it appears to the county commissioners, or, in the county of Suffolk, to the commissioner of institutions of Boston, that a prisoner in a jail or house of correction convicted of an offence named in section fifty-three of chapter two hundred and seventy-two or of drunkenness, and sentenced for a term or for non-payment of a fine, has reformed and is willing and desirous to return to an orderly course of life, they may issue to him a permit to be at liberty during the remainder of his term of sentence.

SECTION 13. Section one hundred and forty-three of said chapter one hundred and twenty-seven is hereby amended by striking out, in the first and second lines, the words "penal institutions commissioner" and inserting in place thereof the words: — commissioner of institutions, — and by striking out the last sentence, — so as to read as follows: — *Section 143.* The county commissioners, or, in Boston, the commissioner of institutions, subject to the approval of a justice of the court which imposed the sentence, after six months from the time of sentence, may discharge a person sentenced to the house of correction, upon a conviction under the provisions of section sixty-two of chapter two hundred and seventy-two of being a common nightwalker, if they are satisfied that the prisoner has reformed.

SECTION 14. Section fifty-three of chapter two hundred and seventy-two of the General Laws is hereby amended by striking out, in the fifteenth and sixteenth lines, the words "or workhouse", — and by striking out, in the sixteenth, seventeenth and eighteenth lines, the words "or in the workhouse, if any, in the town where the offender has a legal settlement, if such town is in the county where the conviction was obtained", — so as to read as follows: —

Section 53. Rogues and vagabonds, persons who use any juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common nightwalkers, both male and female, persons who with offensive or disorderly act or language accost or annoy in public places persons of the opposite sex, pilferers, lewd, wanton and lascivious persons in speech or behavior, common railers and brawlers, persons who neglect their calling or employment or who misspend what they earn and do not provide for themselves or for the support of their families, and all other idle and disorderly persons including therein those persons who neglect all lawful business and habitually misspend their time by frequenting houses of ill fame, gaming houses or tippling shops, may be punished by imprisonment in the Massachusetts reformatory or at the state farm in the case of a male offender, or in the reformatory for women or at the state farm in the case of a female offender, or, for not more than six months, in the house of correction in the town where the offender is convicted, or by a fine not exceeding two hundred dollars, either with or without a condition that, if it is not paid within a time specified, the person convicted shall be punished by imprisonment under this section; and such conditional sentence shall be executed according to section ten of chapter two hundred and seventy-nine.

SECTION 15. Section fifty-five of said chapter two hundred and seventy-two is hereby repealed.

SECTION 16. Section sixty-two of said chapter two hundred and seventy-two is hereby amended by striking out the comma after the word "correction" in the fourth line and inserting in place thereof the word: — or, — and by striking out, in the same line, the words ", or workhouse, if any, in the town", — so as to read as follows: — *Section 62.* If a complaint charges a person with being a common nightwalker, and it is proved at the trial that such person has been twice before convicted of the same offence, he may be sentenced to the house of correction or state farm for not more than two and one half years.

SECTION 17. Section sixty-six of said chapter two hundred and seventy-two is hereby amended by striking out, in the last line, the words "or workhouse", — so as to read as follows: — *Section 66.* Idle persons who, not having visible

means of support, live without lawful employment; persons wandering abroad and visiting tippling shops or houses of ill fame, or lodging in groceries, outhouses, market places, sheds, barns or in the open air, and not giving a good account of themselves; persons wandering abroad and begging, or who go about from door to door, or place themselves in public ways, passages or other public places to beg or receive alms, and who do not come within the description of tramps, as contained in section sixty-three, shall be deemed vagrants, and may be sentenced to the Massachusetts reformatory or state farm or shall be punished by imprisonment for not more than six months in the house of correction.

SECTION 18. Section twenty-one of chapter two hundred and seventy-nine of the General Laws is hereby repealed.

2. Other Matters relating to the Poor.

SECTION 19. Section three of chapter one hundred and seventeen of the General Laws is hereby amended by striking out, in the second and third lines, the words "by contract", — and also the second and third sentences, — so as to read as follows: — *Section 3.* The overseers shall investigate each place where town paupers are to be provided for in families, and shall endeavor to secure their proper care and maintenance. The overseers, either by one of their own number or by a duly appointed agent, shall, at least once in every six months, visit each place where the town paupers are supported, and a record of each visit and of the condition of the paupers visited shall be kept.

Note. — The care and maintenance of paupers in families by contract has long since been discontinued. Accordingly, we recommend the elimination from section 3 of chapter 117 of the General Laws of the pertinent provisions.

SECTION 20. Section six of said chapter one hundred and seventeen is hereby amended by striking out the last sentence.

Note. — A mother's obligation to support her children is now covered by section 1 of chapter 273 of the General Laws; accordingly, we recommend an amendment of section 6 of chapter 117 of the General Laws, striking out a superseded provision.

SECTION 21. Section thirteen of said chapter one hundred and seventeen is hereby amended by striking out, in the

seventh line, the words "as a pauper", — so as to read as follows: — *Section 13.* A treasurer of a savings bank, institution for savings, national bank, trust company, co-operative bank, benefit association, insurance company or safe deposit company who, upon request in writing signed by an overseer of the poor of a town, unreasonably refuses to inform him of the amount deposited in the corporation or association to the credit of a person named in such request who is a charge upon such town, or who wilfully renders false information in reply to such request, shall forfeit fifty dollars to the use of such town.

Note. — As aid is extended to certain persons who are not, therefore, to be regarded as paupers (see chapter 116, section 3) the reason for retaining the words "as a pauper" in section 13 of chapter 117 and in section 41 of chapter 121 has ceased to exist.

SECTION 22. Section thirty-eight of said chapter one hundred and seventeen is hereby amended by striking out, in the third and fourth lines, the words "a state pauper or an idiot, or otherwise so defective in body or mind as to make his retention in an almshouse desirable" and inserting in place thereof the words: — so defective in body as to make his retention in an almshouse necessary, — so as to read as follows: — *Section 38.* No such child who can be cared for as provided in section thirty-six without inordinate expense shall be retained in an almshouse unless he is so defective in body as to make his retention in an almshouse necessary, or unless he is under three years and his mother is an inmate thereof and a suitable person to aid in taking care of him.

Note. — Children are not now retained in almshouses for the reason that they are paupers or mental defectives. Accordingly, we recommend the elimination from section 38 of chapter 117 of certain language rendered obsolete by enlightened policy.

SECTION 23. Sections thirty-nine, forty-one and forty-two of said chapter one hundred and seventeen and sections twenty-three to twenty-six, inclusive, of chapter one hundred and nineteen of the General Laws are hereby repealed.

Note. — The Commissioner of Public Welfare informs us that the placing of children in the custody of private charitable institutions or societies, as provided for by the aforesaid sections, has long since been discontinued. Accordingly, we recommend the repeal of certain sections of chapters 117 and 119 relative thereto.

SECTION 24. Sections fifteen and sixteen of said chapter one hundred and nineteen are hereby repealed.

Note. — The Commissioner of Public Welfare informs us that the foregoing sections are never used in practice because of the more adequate workable provisions of section 38 of the same chapter relative to the support of indigent children by the Department of Public Welfare.

SECTION 25. Section twenty-two of said chapter one hundred and nineteen is hereby amended by striking out, in the fifth line, the words "in St. Mary's Infant Asylum and Lying-in Hospital or", — so as to read as follows: — *Section 22.* The overseers of the poor of a town and the superintendent and board of trustees of the state infirmary shall commit any indigent or neglected infant having no known settlement in the commonwealth to the custody of the department, which shall provide for them in a family or other suitable place, as it deems expedient for the interests of the child.

Note. — Commitments to St. Mary's Infant Asylum and Lying-in Hospital have for several years been discontinued.

SECTION 26. Section sixteen of chapter one hundred and twenty-one of the General Laws is hereby amended by striking out all after the word "all" in the first line down to and including the word "all" in the fourth line, — so as to read as follows: — *Section 16.* The department shall at least once a year visit all minor children who are supported at the expense of any town. It shall inquire into the condition of such children, and make such other investigations relative thereto as it may think fit; and for this purpose it may have private interviews with such children at any time.

Note. — The Department of Public Welfare no longer supervises children placed out by other departments, as provided for in the provisions struck out by the foregoing amendment.

SECTION 27. Sections seventeen, eighteen and nineteen of said chapter one hundred and twenty-one are hereby repealed.

Note. — Sections 17 to 19 of chapter 121 relate to the duties of the Department of Public Welfare in respect to contracts for placing out of children and their adoption. Such contracts are no longer made and the practice of procuring adoptions has long since been discontinued.

SECTION 28. Section forty-one of said chapter one hundred and twenty-one is hereby amended by striking out, in the

sixth line, the words "as a pauper", — so as to read as follows: — *Section 41.* A treasurer of a savings bank, national bank, trust company, co-operative bank, benefit association, insurance company or safe deposit company who, upon written request, signed by an officer of the department, unreasonably refuses to inform him of the amount deposited in the corporation or association to the credit of a person named in such request who is a charge upon the commonwealth, or who wilfully renders false information in reply to such request, shall forfeit fifty dollars, to the use of the commonwealth.

Note. — See note to section 21.

SECTION 29. Section three of chapter one hundred and twenty-two of the General Laws is hereby amended by striking out all after the word "them" in the third line, — so as to read as follows: — *Section 3.* The trustees shall have and exercise the same powers relative to pauper inmates and their property as towns and overseers of the poor have relative to paupers supported or relieved by them.

Note. — In practice the Department of Public Welfare returns inmates of the State Infirmary to their place of origin, by authority of General Laws, chapter 121, section 9. Like authority to the trustees is superfluous, is never exercised, and is therefore obsolete.

SECTION 30. Sections nine and twenty-two of said chapter one hundred and twenty-two are hereby repealed.

Note. — Section 9 of chapter 122 relates in part to poor Indians who received aid prior to July 23, 1869. So far as known, there are no such persons. The rest of the section is superfluous, because identical in substance with the law applicable to all poor persons. The purpose of section 22 is covered by General Laws, chapter 123, section 20, as amended by section 1 of chapter 245 of the Acts of 1923, and said section 22, we are informed, is never used.

MISCELLANEOUS.

SECTION 31. Section nine A of chapter twenty-two of the General Laws, inserted therein by chapter four hundred and sixty-one of the acts of nineteen hundred and twenty-one, and as amended by section one of chapter three hundred and thirty-one of the acts of nineteen hundred and twenty-two, is hereby further amended by striking out, in the fifteenth

line, the words "and watchmen", — so as to read as follows: — *Section 9A.* Whenever the governor shall deem it necessary to provide more effectively for the protection of persons and property and for the maintenance of law and order in the commonwealth, he may authorize the commissioner to make additional appointments not exceeding one hundred and forty in number to the division of state police, together with such other employees as the governor may deem necessary for the proper administration thereof. The appointment of the additional officers herein provided for shall be by enlistment for terms not exceeding three years, and such appointees shall be exempt from the requirements of civil service law and rules. Said additional officers shall have and exercise within the commonwealth all the powers of constables, except the service of civil process, and of police officers. The commissioner may, subject to the approval of the governor, make rules and regulations for said additional force, including matters pertaining to their discipline, organization and government, compensation and equipment, and means of swift transportation; provided, that said force shall not be used or called upon for service in any industrial dispute, unless actual violence has occurred therein, and then only by order of the governor or the person acting in his place. Any member of said force violating any of the rules or regulations for said force shall be subject to discipline or discharge in accordance with said rules and regulations. The commissioner may expend annually for the expenses of administration, organization, government, training, compensation, equipment and maintenance such amount as the general court may appropriate.

Note. — Said section 9A provides that the State constabulary shall have and exercise the powers of constables, police officers and watchmen. Watchmen, in the sense used in said section, became a thing of the past with the repeal of chapter 31 of the Revised Laws as obsolete. The word adds nothing to section 9A and we accordingly advise its omission.

SECTION 32. Section twenty of chapter twenty-nine of the General Laws, as amended by section twenty-five of chapter three hundred and sixty-two of the acts of nineteen hundred and twenty-three, is hereby further amended by striking out, in the fifth and sixth lines, the words "gratuities and", — so as to read as follows: —*Section 20.* No account or demand requiring the certificate of the comptroller or warrant

of the governor shall be paid from an appropriation unless it has been authorized and approved by the head of the department or office for which it was contracted; nor shall any appropriation be used for expenses, except special allowances by the general court, unless full and properly approved vouchers therefor have been filed with the comptroller.

Note. — Court decisions and rulings of the Attorney General hold that mere gratuities are unconstitutional.

SECTION 33. Section sixteen of chapter thirty-seven of the General Laws is hereby amended by inserting after the word "Sheriffs" in the first line the words: —, by themselves or by their deputies, — so as to read as follows: — *Section 16.* Sheriffs, by themselves or by their deputies, shall attend all sessions of the supreme judicial and superior courts in their respective counties, and, when required, meetings of the county commissioners.

Note. — This section would render section 16 of chapter 37 consistent with actual practice and the necessities of the case. Sheriffs cannot personally attend all court sessions. Attendance by deputy should be expressly recognized.

SECTION 34. Section seventy-one of chapter fifty-nine of the General Laws is hereby amended by striking out the last sentence.

Note. — The said last sentence of section 71 of chapter 59, relating to the abatement of local taxes, provides that no poll tax shall be abated under this section within the calendar year in which it is assessed. This restriction has sole relation to the long since repealed requirement of a poll tax payment as a voting qualification and was inserted in the law to prevent the abuse of abatements in order to get the names of delinquent polls on the voting lists.

SECTION 35. Sections forty-nine to fifty-three, inclusive, of chapter sixty-two of the General Laws are hereby repealed.

Note. — We are informed by the Commissioner of Corporations and Taxation that these sections, providing for local taxation of income producing property as to which no return of income is made, have never been used in the decade during which the income tax provisions have been in force. As there are ample means of enforcing the law without these provisions, we recommend their repeal as superfluous and as having no effect or influence on existing rights.

SECTION 36. Section thirty-four of chapter eighty-two of the General Laws is hereby amended by striking out, in the

fourth and fifth lines, the words "for bicycle paths", — so as to read as follows: — *Section 34.* If the city council of a city, or a town, accepts this section or has accepted the corresponding provisions of earlier laws, the board or officers authorized to lay out highways or town ways may reserve spaces between the side lines thereof for the use of horseback riders, or for street railways, except such as may be operated by steam, for drains, sewers and electric wires, for trees and grass, and for planting.

Note. — Obviously the need of providing bicycle paths in public ways no longer exists.

SECTION 37. Sections one to eight, inclusive, of chapter eighty-eight of the General Laws are hereby repealed.

Note. — These provisions relative to ferries are practically, if not universally, obsolete.

SECTION 38. Sections ninety-three, ninety-four and ninety-five of chapter ninety-four of the General Laws are hereby repealed.

Note. — These sections have long been ignored and are without adaptation to the modern manufacture of chocolate.

SECTION 39. Section one hundred and seventy-nine of said chapter ninety-four is hereby repealed.

Note. — This section should be repealed as wholly inoperative. If weighers of boilers, etc., should be necessary, they may be provided for under section 85 of chapter 41.

SECTION 40. Sections two hundred and sixty-two, two hundred and sixty-three, two hundred and sixty-four, two hundred and sixty-seven and two hundred and sixty-eight of said chapter ninety-four are hereby repealed.

SECTION 41. Section two hundred and sixty-six of said chapter ninety-four is hereby amended by striking out, in the fourth and fifth lines, the words "and marked or branded as provided in section two hundred and sixty-three", — and by striking out, in the sixth, seventh and eighth lines, the following: — "; but sections two hundred and sixty-two to two hundred and sixty-eight, inclusive, shall not" and inserting in place thereof the following: — . Nothing in section two hundred and sixty-five shall, — so as to read as follows: — *Section 266.* Whoever sells, exposes for sale, ships or

receives on board a vessel in casks, any lime manufactured in the commonwealth, other than such as is contained in casks made according to the preceding section, shall be punished by a fine of one dollar and fifty cents for each cask sold, exposed for sale, shipped or received on board a vessel. Nothing in section two hundred and sixty-five shall prevent any person from retailing lime by the bushel or other quantity, when not in casks.

Note. — Of sections 262 to 268 of chapter 94 of the General Laws relative to lime and lime casks, the only provisions that have not fallen into disuse are section 265 and the related portions of section 266. Accordingly, we recommend the repeal of the sections that are wholly obsolete and the amendment of section 266.

SECTION 42. Section two hundred and sixty-nine of said chapter ninety-four is hereby repealed.

Note. — This section, relative to marble, soapstone and freestone, serves no useful purpose and is rendered superfluous by section 85 of chapter 41.

SECTION 43. Sections twelve and thirteen of chapter one hundred and fifty-one of the General Laws are hereby repealed.

Note. — These sections, relative to the newspaper publication of minimum wage decrees, have been held unconstitutional by the Supreme Judicial Court of the Commonwealth, in Commonwealth *v.* Boston Transcript Co., 249 Mass. 477.

SECTION 44. Chapter one hundred and sixty-three of the General Laws is hereby repealed.

Note. — This chapter relates to trackless trolley companies. There are none.

SECTION 45. Section thirty-four of chapter two hundred and twenty-one of the General Laws is hereby repealed.

Note. — The clerks of courts at the present time have nothing to do with the funds of insolvent savings banks or insurance companies. As to savings banks, see section 35 of chapter 167 of the General Laws, as amended by chapter 240 of the Acts of 1925, and as to insurance companies see section 178 of chapter 175 of the General Laws, as amended by section 14 of chapter 406 of the Acts of 1924.

SECTION 46. Sections one to six, inclusive, of chapter two hundred and forty-seven of the General Laws are hereby repealed.

Note. — As beasts are no longer or rarely distrained or impounded, no valid reason exists for the retention of the old remedy for their recovery by replevin.

SECTION 47. Section two of chapter two hundred and forty-eight of the General Laws is hereby amended by striking out the second comma in the third line and inserting in place thereof the word: — or, — and by striking out all after the word "courts" in the fourth line, — so as to read as follows: — *Section 2.* The writ may be issued, irrespective of the county in which the person is imprisoned or restrained, by the supreme judicial or the superior court, by a probate or a district court or by a judge of any of said courts.

Note. — The provision of law authorizing a justice of the peace to issue the writ of habeas corpus is wholly disused and was enacted at a time when the office of justice of the peace was more judicial and less ministerial than at the present time.

SECTION 48. Sections sixty-three and sixty-four of chapter two hundred and fifty-three of the General Laws are hereby repealed.

Note. — These sections relate to a kind of mill, and course of doing business, which have ceased to exist.

SECTION 49. Section twenty-six of chapter two hundred and sixty-five of the General Laws is hereby amended by striking out all after the word "will" in the eighth line down to and including the word "country" in the eleventh line, — so as to read as follows: — *Section 26.* Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for not more than twenty-five years.

Note. — The provisions struck out by this and the following section have been obsolete ever since slavery was abolished in the United States.

SECTION 50. Said chapter two hundred and sixty-five is hereby further amended by striking out section twenty-seven and inserting in place thereof the following: — *Section 27.* A crime described in the preceding section may be tried in the county where committed or in any county in or to which the person so seized, inveigled or kidnapped is confined, held, carried or brought; and upon the trial of any such crime, the consent thereto of the person so inveigled, kidnapped or confined shall not be a defence unless the jury finds that such consent was not obtained by fraud or extorted by duress or threats.

APPENDIX C.

AN ACT REPEALING CERTAIN LAWS WHICH HAVE BEEN RENDERED INOPERATIVE BY FEDERAL LEGISLATION.

Be it enacted, etc., as follows:

SECTION 1. Chapter two hundred and sixteen of the General Laws, except so much thereof as is referred to by the Federal bankruptcy act and by section forty-one of chapter two hundred and three of the General Laws, is hereby repealed.

Note. — See III A of our report.

SECTION 2. Section eighteen of chapter two hundred and twenty of the General Laws is hereby repealed.

Note. — See III B of our report.

Appendix D.

AN ACT REPEALING CERTAIN LAWS THE REASONS FOR WHICH HAVE CEASED TO EXIST OR WHICH HAVE BECOME UNSUITED TO THEIR PURPOSES.

Be it enacted, etc., as follows:

DISABLED SOLDIERS AND SAILORS.

SECTION 1. Section seven of chapter fifteen and sections thirty-nine and forty of chapter seventy-four of the General Laws are hereby repealed.

Note. — The training and rehabilitation of disabled soldiers and sailors is provided for under other provisions of law, both State and Federal, and accordingly, these provisions have never been availed of.

FIREWARDS.

SECTION 2. Sections one and two of chapter forty-eight of the General Laws are hereby repealed.

SECTION 3. Said chapter forty-eight is hereby further amended by striking out section three and inserting in place thereof the following: — *Section 3.* The selectmen or the mayor and aldermen present at a place which is in immediate danger from fire, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present may direct any building to be demolished if they deem it necessary to prevent the spread of the fire.

SECTION 4. Section six of said chapter forty-eight is hereby amended by striking out, in the first line, the words "firewards or other", — so as to read as follows: — *Section 6.* Such officers may require assistance for extinguishing a fire and for removing furniture, goods or merchandise from a building on fire or in danger of fire. They may appoint guards to secure the same, may require assistance for demolishing a building, and suppress tumults and disorders at fires.

SECTION 5. Section thirty-one of said chapter forty-eight, as amended by section two of chapter two hundred and fifty of the acts of nineteen hundred and twenty-five, is hereby further amended by striking out, in the fourth and

fifth lines, the words ", under the direction of the firewards," , — so as to read as follows: — *Section 31.* Each company shall meet monthly, or oftener if necessary, to examine their engine and its equipments and see that they are in good repair and ready for use. They shall extinguish any fire in their city or town.

SECTION 6. Section forty-seven of said chapter forty-eight is hereby amended by striking out, in the second line, the word "of" and inserting in place thereof the words: — heretofore exercised by, — so as to read as follows: — *Section 47.* The engineers, in the extinguishment of fires, shall exercise the powers heretofore exercised by firewards, and in the nomination and appointment of enginemen shall exercise the powers and perform the duties of selectmen. They may appoint such men to the engines, hose and hook and ladder carriages, and constitute such companies for securing property endangered by fire, as they deem expedient.

SECTION 7. Section seventy-five of said chapter forty-eight is hereby amended by striking out, in the second line, the word "of" where it first occurs, and inserting in place thereof the words: — heretofore exercised by, — and also by inserting after the word "acts" in the fifth line, the word: — heretofore, — so as to read as follows: — *Section 75.* Engineers shall have and exercise within their district the powers and authority heretofore exercised by firewards of towns relating to the extinguishment of fires and the demolition of buildings; and districts shall be liable in the same manner for acts done by such engineers, or by their orders, as towns for acts heretofore done by firewards.

SECTION 8. Section seventy-six of said chapter forty-eight is hereby amended by striking out the word "of" where it first occurs in the second line, and inserting in place thereof the words: — heretofore belonging to, — so as to read as follows: — *Section 76.* Members of the fire department of such district shall have the immunities and privileges heretofore belonging to firewards and enginemen of towns, and shall receive such compensation as the district determines.

SECTION 9. Section sixty-three of chapter one hundred and forty-eight of the General Laws is hereby amended by striking out all after the word "twenty" in the fourteenth line and inserting in place thereof the words: — or to an engineer of a fire department.

SECTION 10. Section twenty-three of chapter two hundred and sixty-six of the General Laws is hereby amended by striking out, in the fifth and sixth lines, the words ", selectmen or firewards" and inserting in place thereof the words: — or selectmen, — so as to read as follows: — *Section 23.* Whoever steals, conveys away or conceals any furniture, goods, chattels, merchandise or effects of persons whose houses or buildings are on fire or are endangered thereby, and does not, within two days thereafter, restore the same or give notice of his possession thereof to the owner, if known, or, if unknown, to the mayor or one of the aldermen or selectmen of the place, shall be guilty of larceny.

Note to sections 2 to 10, inclusive. — The office of fireward is apparently obsolete. We accordingly recommend the repeal of the provisions of law providing for their appointment and duties, and the amendment of several other sections of the General Laws wherein they are referred to.

POUNDS AND FIELD DRIVERS.

SECTION 11. Sections twenty-two to twenty-eight, inclusive, and thirty to forty-two, inclusive, of chapter forty-nine of the General Laws are hereby repealed.

Note. — The provisions of the foregoing sections of chapter 49 of the General Laws, relative to pounds and field drivers, have ceased to be of any importance and in practice have been superseded by more modern methods of dealing with the subject matter.

SECTION 12. Section twenty-nine of said chapter forty-nine is hereby amended by striking out, in the third and fourth lines, the words "or by distraining the beasts doing the damage and proceeding therewith as hereinafter directed" and inserting in place thereof the words: — doing the damage, — and by striking out, in the seventh line, the words "nor the beasts distrained", — so as to read as follows: — *Section 29.* If a person is injured in his land by horses, mules, asses, neat cattle, sheep, goats or swine, he may recover his damages in an action against the owner of the beasts doing the damage; but if the beasts were lawfully on the adjoining lands and escaped therefrom through neglect of the person injured to maintain his part of the division fence the owner shall not be liable.

Note. — So much of section 29 of chapter 49 of the General Laws as provides for an action at law for beasts doing damage should be retained, for

the repeal of the section might not be held to restore the remedy at common law. The remedy by distraint, however, we would eliminate in common with the other obsolete provisions of sections 22 to 42, inclusive, of said chapter.

MISCELLANEOUS.

SECTION 13. Section one hundred and forty-one of chapter fifty-four of the General Laws, as amended by chapter one hundred and forty-two of the acts of nineteen hundred and twenty-two, is hereby further amended by striking out, in the fifth, sixth and seventh lines, the words ", and another election to fill the vacancy for such representative shall be held on the fourth Monday of the same month of November", — and by striking out, in the ninth and tenth lines, the words "or upon failure to elect on the fourth Monday of November", — so as to read as follows: — *Section 141.* Upon failure to choose a representative in the general court at the biennial state election, a certificate thereof shall be transmitted forthwith to the state secretary by the officers required to transmit certificates of election.

Upon a vacancy in the office of representative in the general court, the speaker of the house of representatives shall issue precepts to the aldermen of each city and the selectmen of each town comprising the district or any part thereof, appointing such time as the house of representatives may order for an election to fill such vacancy; provided, that if such vacancy occurs during a recess between the first and second annual sessions of the same general court, the speaker may fix the time for an election to fill such vacancy. Upon receipt of such precepts, the aldermen or the selectmen shall call an election, which shall be held in accordance with the precepts.

Note. — The provisions eliminated provide for an election, on the 4th of November, of representatives to the General Court, in case of vacancy or failure to elect at the biennial State election. As the interval between the date of the regular election and the said fourth Monday is much too brief for compliance with the laws regulating primaries and elections, the provision for a second election is impossible of compliance.

SECTION 14. Sections nineteen and twenty of chapter ninety-three of the General Laws are hereby repealed.

SECTION 15. Section twenty-three of said chapter ninety-three is hereby amended by striking out, in the second and third lines, the words "sections twenty and twenty-one"

and inserting in place thereof the words: — section twenty-one, — so as to read as follows: — *Section 23.* Whoever violates any provision of law relating to correspondence schools for which no penalty is provided, or of section twenty-one or of any rule or regulation established under section twenty-two, shall be punished by a fine of not more than five hundred dollars.

Note. — The provisions of law regulating the sale of securities by correspondence schools, etc., are no longer necessary in view of the enactment of the "blue sky" law, so called, inserted in the General Laws by chapter 499 of the Acts of 1921, as chapter 110A.

SECTION 16. Section two hundred and thirty-nine of chapter ninety-four of the General Laws is hereby repealed.

Note. — This section provides for the inspection of coal under local ordinances and by-laws. Since the insertion of sections 239A and 249A to 249F of the same chapter (1926, 382; 1923, 155 § 1) section 239 has become superfluous.

RECOGNIZANCES FOR DEBT.

SECTION 17. Chapter two hundred and fifty-six of the General Laws is hereby repealed.

Note. — Recognizance by debtors is too rarely availed of to warrant retention in the General Laws.

SECTION 18. Section four of chapter two hundred and sixty-two of the General Laws, as amended by section one of chapter three hundred and sixty-three of the acts of nineteen hundred and twenty-six, is hereby further amended by striking out the paragraph included in the thirty-third and thirty-fourth lines.

Note. — This section repeals the fee for taking and recording a recognizance for debt under chapter 256 of the General Laws, the repeal of which is provided for by the preceding section.